THIRD THOUSAND. [No. I.

# MY CHURCH POLITICS:

IN

# LETTERS TO MY PEOPLE;

WITH

Special Reference to the Present Position

OF

THE CHURCH OF SCOTLAND IN ITS RELATIONS TO THE STATE.

BY THE REV. N. MORREN,
NORTH CHURCH, GREENOCK.


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TO THE MEMBERS

OF

# THE NORTH CHURCH CONGREGATION,

GREENOCK.

My Dear Friends,

I feel that the time is come, when the members of my congregation are entitled to receive from their minister, a full and undisguised exposition of the views he has been led to form regarding the position of the Church of Scotland in its relations to the State, and the consequent duties incumbent both upon minister and people. Some of you, perhaps, are of opinion, that I ought to have done this sooner; but in answer to that implied reproach, I have just to plead —not certainly my unwillingness that my sentiments should be fully known—(for I have never sought to conceal them); but simply my long-cherished hope, that by some satisfactory settlement of the question, I should have been spared the necessity of entering on the painful discussion. Being unshackled by the trammels of party, which has ever been the bane of our Church, and now threatens to be its ruin—seeing much to condemn and deplore in the principles and proceedings of both the extremes of faction, by which the Church is rent, I am one of those who have been waiting in the expectation, that by some well-devised measure, in which both Church and State might agree, every ground of controversy between them might in the meantime have been taken out of the way, and their harmonious co-operation restored. In that hope, I grieve to say, I have been disappointed; and now, by the irresistible force of events, (which, however, it was not difficult to foresee,) things are hastening to such a pass, that it becomes the imperative duty of every one, be he clergyman or layman, to come forward, and freely and frankly declare both his sentiments as to the past, and his determinatiou as to the future.

As the origin of the lamentable controversy dates more than eight years back, it will be necessary to refresh your memories with certain facts, which you heard of at the time, but may since have forgotten. The *two* points, therefore, to which I would devote the present letter, are, 1st. What was the leading motive of the Church in framing the Veto Act: and, 2d. What was the course open for her to pursue, when she found that in the judgment of the Supreme Civil Court she had thereby exceeded her constitutional power.

I presume you are all aware, that that which brought the Church

into her present difficulties, was what is commonly termed the Veto Law; an Act, which, with the best intentions she passed, to the effect, that, whenever the majority of the male heads of families in a parish shall simply *dissent* from the settlement of a presentee, (though without assigning any reasons for rejecting him,) the Presbytery, without further procedure, shall refuse to admit him to the cure.

Now it is of great importance to ascertain, in the outset, what was the leading motive and governing aim of the Church in enacting such a law. Whether was it, that those who then acquired for the first time the ascendancy in her councils, discovered that it was absolutely incompetent, nugatory, *sinful*, to settle a minister in these circumstances:—or, whether was it, that having as they supposed, full authority by the law of the country to impose this popular check upon the exercise of patronage, they deemed it right and expedient to apply it—though, at the same time, upon general principles, they might not think the people's rejection of a man, *without reasons*, a positive bar to his induction? In other words, whether was the enactment of the Veto Law a matter of strict conscience, and essential principle, and held to be of indispensable necessity, because including a something without which ordination ought never to be granted—or if granted, would not be valid? Or, whether was it only a matter of high Christian expediency; an arrangement in ecclesiastical polity, which the Church thought very desirable, and which she would exhaust her legal powers in obtaining for the people, but which, at the same time, she might with perfect consistency alter or abandon, if she found that she had exceeded the powers given her by law; while she would still unite with the people in urging the State to grant them a privilege which it would then have been found the State alone can effectually or constitutionally bestow?—for no third party can be allowed to come between the sovereign power and its own subjects, pretending to grant them *public immunities* at the expense of others of its subjects, which the declared law of the country has not sanctioned.

Now this is a question to which different answers will, perhaps be given, according to the different ideas and intentions of those who combined to carry the measure in the Church courts. As for myself, and many other clerical friends, who voted with me for the adoption of the Veto Act, I can honestly say, that we did so, simply because we regarded it (with all its faults,) as an expedient supposed to be within the Church's own power, for preventing the abuse of patronage. But we certainly never for a moment regarded it as a measure of indispensable necessity,—as if no Scriptural Church could exist without it. Nor does the Act itself bear any thing on the face of it which can lead to the conclusion, that such a stringent view of its object was entertained by those who drew it up.* Even though

* The precise terms of the Act will be discussed in a future letter. It is enough for our present purpose to remark, that though professing to be based on an alleged fundamental law of the Church, (which was erroneously assumed to be the *law of the State* also,) it did not take up the ground either of essential principle, or of indispensable necessity.

it could be shown then, that some of those who voted for it did so, because they thought the absence of the people's dissent essential to ordination, that would be far from proving, that such was the motive of the entire Church in adopting it.

It is necessary, however, to clear up this point somewhat more fully, for in truth it lies at the foundation of the whole controversy. Will it then be seriously maintained, that about the year 1834 or 1835, those who till then had been the minority of the Church, but who then acquired the majority, all at once felt themselves constrained in conscience to adopt the principle, that the consent of a congregation, or at least the absence of their dissent, is an essential element in every lawful ordination, so that what has been termed "the pastoral relation," cannot be formed without it? I beg you just to look calmly at the practical consequences which such a position would involve. The principle laid down, if it be held applicable to all ministerial ordinations subsequent to the year 1834, must be equally applicable to all those which preceded it, seeing that the fundamental laws of Christ's house are unalterably the same. Now it is well known, that with regard to the great mass of those by whom the Veto Act was carried, the element in question, said to be so essential to pastoral ordination, was so far from entering into theirs, that there was not so much as any inquiry instituted as to whether the people dissented from their settlement or not. There was, it is true, the *form* of a call, for receiving consents—(a document seldom indeed signed by a majority, yet sustained as a matter of course)—but there was no arrangement whatever for receiving *dissents;* and it is an indisputable fact, that, down to the passing of the Veto, those called the *popular* clergy, took ordination, without any proof of the people's consent, quite as readily as did their opponents. If, therefore, this alleged principle of the new Law be correct and scriptural, there is no evidence of its promoters and supporters being themselves lawfully ordained ministers of Christ: in the case of many of them, abundant proof might be found to the contrary; and on either supposition, there would be (on their own showing) an end to their pastoral relation altogether, or I should rather say, there never was a beginning. And if they are not lawfully constituted pastors, they are not office-bearers in the Church at all, and consequently they had no right to make either the Veto Law, or any other law, for the regulation of the affairs of a body into which they were wrongously intruded, and of which they are no true members.

It is no answer to this to allege, that since the time of their own ordination these good men have received new light on the subject. For their bare knowledge of an essential omission in their own ordination cannot supply the want of it; yea, their sincere regret for the omission cannot of itself give them the status of rightly ordained pastors, if so it be that proof of the absence of the people's dissent be necessary to form the pastoral relation. If, to use their own illustration, (though I am far from thinking it the true meaning of the passage,) if he who cometh not in by the door, but climbeth up some other way, is a thief and a robber, he will not cease to be a thief and a robber, merely because he knows and laments that he did not come in

by the door. Or, as in the case of marriage, (which is another of their favourite illustrations,) if either of the parties can prove that their consent was neither asked nor obtained, there would be legally an end to the connection.

But while by some it may be admitted, that the majority who passed the Veto Act, did not thereby mean to insinuate, that the bare dissent of the congregation necessarily vitiates an ordination, (for that would have been to pronounce their own condemnation,) still they may affirm that their object in making that law was to declare, that they held the people's dissent, though without reasons, to be so vital and important a point, that *every thing*, even connection with the state, should, if necessary, be sacrificed, in order to give effect to it; and that to disregard it, would be not only highly inexpedient and improper, but *absolutely sinful.*

And when, I ask, is it said, that this opinion was formed, and this declaration made? Why not until, (and I beg you to fix in your minds the precise period,) not until those who till then had been in the minority, chanced to acquire the majority. For it is a fact not to be lost sight of, that all of them, from the time of their own ordination, down to the time when their increased majority enabled them to carry the Veto Act, all of them had taken a part, and often a willing and active part, in many a settlement, in which no inquiry was instituted, or was proposed to be instituted by themselves or others, as to whether the people dissented from the appointment or not. Mark the fact which follows,—they proposed the Veto in the Assembly of 1833, but were then left in a minority, and it was not until 1835 that it became the law of the Church. Did they then in 1833 proclaim to the world that they would not, because they could not with a good conscience, take part in any settlements where the principle was not enforced? No, my friends!—they went on ordaining and inducting just as before; and we say it without any breach of charity, (for no candid man of their number will deny it,) that if they had not happened then to acquire a majority in the councils of the Church, they would have been going on just as before, even down to this day,—taking a part in settlements in obedience to their ecclesiastical superiors, according to what the law and practice of the Church might be. I grant you, that they often protested against the old system; I doubt not they would have continued to protest, and to use every constitutional means to have the evil remedied. But there is a vast and essential difference between our doing a thing against which we protest, because, for various reasons, we think it objectionable,—and our doing a thing against which we protest because we hold it to be absolutely *sinful.* In the former case, we *may* take part in it, in obedience to lawful authority, and by our protest save both our consistency and our conscience. But in the latter case, no protest can save us in the sight of conscience, or in the sight of the God of conscience, from the guilt of being partakers in other men's sins. Who ever heard of a man joining with others in the commission of theft or murder, and fancying he would be saved from the consequences, because he had committed the crimes under protest? The first Reformers were called protestants, because they *protested* against

the errors of popery, but let it be remembered that they at the same time left the popish communion. Could there be a severer reflection on any portion of the present majority of the Church, than to affirm (as do some of their friends,) that by their own acknowledgment, during all their previous ministerial incumbency, down to the year 1834, they had allowed themselves to be active instruments in committing sin,—that they themselves got possession of their livings and their cures, and were the agents in inducting many others, by a method which their own consciences solemnly condemn as a "great crime," and yet that by some unaccountable coincidence of circumstances, they did not discover it to be so very criminal until they happened to secure a majority for their party in the Church courts?

These, I beg you to observe, are not my assertions, but the assertions of some of their own friends. But I will not do any of my fathers and brethren in the majority the foul injustice to suppose these allegations are correct. I know, on the contrary, that with respect to the great body of those who carried the Veto Law, these assertions are positively incorrect. That law was brought in and passed, not with a view to meet any new scruples of the clergy on the subject of ordination, but simply, as a well-meant but ill-managed attempt to confer influence on the people. The way in which it originated shows this, and will be recollected by all but the youngest of you. Its origin was this. The French Revolution of 1830 gave a prodigious impulse to the movement in favour of all kinds of popular rights throughout Europe. It was the means of procuring, or at least of hastening in this country, first, Parliamentary, and then Municipal Reform, as well as various other *liberal* measures, all based on the principle of "the will of the people." Now it was not to be wondered at, that this demand for the extension of popular influence should in Scotland show itself in reference to the mode of appointing ministers, a matter in which our countrymen, (I say it to their honour,) have always taken a lively interest; an interest which was in those days greatly heightened, in consequence of the attack made upon the Establishment, on that very score, by the Voluntary Dissenters. Petitions on the subject of Patronage were addressed to the legislature, and a Parliamentary committee was appointed to inquire, and did inquire and report. But the government of the day being unwilling or afraid to attempt any measure themselves, handed the matter over to the then leaders of the Church, that they might devise, in concert with the crown lawyers, some scheme, by which the Church, without interfering with the ascertained legal rights of patronage, might yet impose on it some popular check.

The result of their deliberations was, not an attempt to enforce the call, and thereby insist on the element of the people's *consent;* but the announcement of a new principle (for which a word had to be coined,) called Non-Intrusion, which was embodied in the Veto Act. And as that Act took its rise from the agitation of secular politics; so the Church, in adopting it, was guided, not so much by a *subjective* view of her own duties in reference to ordination, as by an *objective* view of the privileges she was advised it was in her power to confer upon the people.

To place this beyond the possibility of dispute, let me remind you of the course pursued by the leaders of the Church, before they brought forward the measure for adoption. What was the mistake they were the most anxious (and very properly), to have the Church guarded against, but precisely the fatal error which, after all, she unfortunately, but unwittingly, did commit, the error of exceeding her legal constitutional prerogative. They were afraid lest they should propose any thing which might be found to be beyond the Church's authority, as limited by statute law. Why, for example, did they fix on the *negative* principle of a Veto, rather than on the *positive* principle of a call? Was it because they preferred the former? By no means. Most of them would rather have had the latter, the *form* of which already existed in the Church, whereas the other was unknown. But they selected it in preference, because, being a less interference with the patron's right, it would be more likely to be found within the Church's legal powers.

We commend them for their caution; yet wnat does it prove, but that *then* at least, there were none of those high-flown, impracticable notions, about the church's absolute unlimited independence of the existing law of the country in the settlement of ministers, of which we have since heard so much. The Church anxiously sought the highest legal advice within her reach, with a view to ascertain whether or not it was constitutionally competent for her to pass the Veto Act; and what was that, but a tacit admission, that there *are* certain things connected with the settlement of ministers which the State nas not placed within her power? what was it, but a confession, that had she not been advised that it was competent for her by law to pass that act, she would not have done so,—and therefore we hold that if she acquiesced in, and acted upon the opinion of one set of lawyers, who were only counsel at the bar, for her guidance, in the first place, in the interpretation of statute law, there would have been no inconsistency had she acquiesced in the decision of another, and a higher set of lawyers, viz. the judges on the bench, when they authoritatively declared, by virtue of their office, what the law *is*. Just suppose, that the Church had been assured by the lawyers she consulted, that the Veto Act was a matter beyond her constitutional province, would she still have persisted in enacting it? That will not be pretended, for why then did she consult them at all? Or make the supposition, that all the lawyers in the country had assured her that the thing was beyond her powers, and that she at the same time foresaw all the consequences which have followed, and may yet follow its enactment, including not only the loss of the temporalities in every parish where it is resisted, but her disruption as a Church, if not her entire overthrow as an establishment; would she, in the face of all this, have still gone on with it? Sure I am, my friends, that if the most violent partizan of the measure could have anticipated but a tithe of the evils which the bare agitation of it has produced in families, congregations, communities—in the Church, and in the country; even *he* would have paused at the step, even *he* would have trembled at the consequences.

Now, if these things are so; if it be admitted even by the most thorough-going Non-Intrusionist, that the Church ought not to have, and certainly would not have carried the measure through, had she been advised that it was incompetent, had she known it to be illegal, or could she have looked into futurity, and realised the deplorable results; what *now* becomes of the plea of necessity, principle, conscience, in the framing of it, at the first, or in the clinging to it in spite of consequences? What becomes now of the idea of essential principle and indispensable necessity? How can that be matter of necessity, principle, or conscience now, which by their own acknowledgment would not have been so then, could they have foreseen the present results? And, in connection with that, there is another question which comes home to the mind with irresistible force—a question, which in the consideration of this unhappy dispute, has never been absent from the mind of any man of plain understanding; a question, which the more it is examined, the more it will be felt to be unanswerable. It is this: "If you could have foreseen the consequences of a certain step, you say you never would have taken it. Then, now that you do know the consequences, and can by retracing the step prevent their recurrence, why do you not retrace it?" That is the obvious dictate of common sense in the ordinary business of life; and it remains to be proved, why it should not regulate the conduct of bodies of men, as well as that of individuals. If the legislature, for instance, chance to pass a measure which produces unforeseen consequences that are found to be prejudicial to the interests of the country; is there any thing degrading in their repealing their own act? No; the degradation would lie in their refusing to repeal it out of false shame, or stubbornness, or pride. And is the Church infallible? or are its laws unalterable and irrevocable, like those of the Medes and Persians? So far is this from being the case, that the table of every General Assembly groans with *overtures;* and were it not for what is called the Barrier Act,* there would be a New Code of Church law every year. Having myself taken part in the discussions regarding the enactment of the Veto, I can bear my distinct testimony, that the whole argument in favour of its adoption went upon the supposition that it was within the Church's powers by law,—and, that should the case be found to be otherwise, and the legislature of the country refuse to sanction it, then it could easily be rescinded, and would certainly be rescinded by the same legislative authority of the Church by which it had been framed.

I might show you, moreover, that as the majority of the Church did not deem, and could not, in the nature of things, have deemed their Veto Law a matter of absolute conscientious principle, or of indispensable necessity, at the time of framing it, so neither do they so regard it now; as was proved in the negociations of the Non-Intrusion committee some time ago with the government. The fundamental element in the Veto Act, is, "Dissent without reasons," which makes the will of the people absolute. But the committee acting for

* An Act which provides that the General Assembly shall enact no standing law, without the consent of a majority of Presbyteries.

the Church did more than once express their acquiescence in a measure of which the fundamental element would be "the judgment of the Presbytery,"—an element with which the other is obviously incompatible.

It is true, indeed, that since their last refusal of that proposal, they have laid before the government a "Statement respecting the Non-intrusion principle," in which they make the astounding assertion, that the "Church and her Presbyteries consider that they have no *warrant* and no *power* to ordain or settle" a presentee rejected by the people. It may be asked, with all respect for these gentlemen, but with all confidence, "When, or where, did the Church (meaning by that, the legislative voice of the Church, lodged in a majority of Presbyteries,) ever express any such sentiment?" That it is entertained by some of the younger clergy, is likely enough; but that it could have been held by a majority of the clerical members of the Non-intrusion committee, at the time of the passing of the Veto Act, we have shown to be impossible. If any of them assert, "Well, so long as it was thought to be *legal*, I only deemed it a matter of *expediency;* but as soon as it was found to be *illegal*, I discovered it to be matter of *principle* and *conscience*,"—I can only say, that this is a discovery, not less singular in its *date*, than it is deplorable in its results.

We now come to the *second* point I have undertaken to illustrate, viz., To inquire what was the course open to the Church to pursue, when she found that in the judgment of the Supreme Civil Court she had exceeded her constitutional powers: or when, at least, she found that in every parish where her law is resisted, she virtually ceases to be established, the illegality of her act necessarily leading to the forfeiture of her temporalities. For you have not to be informed, that a rejected presentee having, in concert with the patron, sought redress in the courts of law, it was decided by the highest tribunal in the country, that the Presbytery, by having refused to take him on trials, had acted illegally, (because contrary to statute-law,) and to his prejudice and hurt; and following up that judgment, the same court has recently found that damages are due for the reparation of the injury inflicted.

Now, it must be candidly acknowledged, that there was a difficulty, a very great difficulty, in the Church reversing the judicial decisions it had already pronounced in this and the other cases which had occurred under the Veto Law. A legislative body may (as we have seen) repeal its own acts, without any loss of dignity or influence; but it is otherwise with the solemn recorded judgments of a supreme judicatory. And therefore, I for one would have been quite prepared for the General Assembly refusing to recall its decisions, or even to review its procedure in these particular cases; taking upon itself, at the same time, all the civil consequences. And sure I am, that if the parties aggrieved were not very unreasonable, a satisfactory adjustment of their claims would easily have been effected, with the concurrence and aid of the whole Church. But the question which is now before us, as to what the Church was to do, not with its judicial decisions, but with the legislative enactment, upon which those

decisions were founded, is a much more serious inquiry, and one that involves the gravest consequences. The Church ought, say some, to have taken steps *immediately* for the repeal of the Act, without the least delay. But really, considering the new position (as unexpected as it was unprecedented) in which she found herself, much allowance was to be made for her embarrassments; nor would it have been right to have precipitated her into hasty resolves. If, for example, she had at once rescinded her Veto Act, it might have been said in Parliament, and with some degree of plausibility, that so little importance did she attach to the measure, that she had abandoned it without any effort, or even any application to get it legalized.

The position, therefore, which I have all along held, was the most safe and honourable for the Church to have taken up, was, to suspend the operation of her law in all new cases that occurred, and at the same time negociate with the State to have it made the law of the country. But if these negociations failed, the Church had but one alternative, either to rescind a measure which her very application to the State showed to be illegal, (for if legal, why apply to have it legalized;) or, if she thought its maintenance essential to her character as a Church of Christ, then her duty was, in a fair, open, honest manner, to declare her connection with State law, and her dependence upon State countenance, at an end.

The leaders of the Church, however, did not adopt either of these courses. They would neither conform the law of the Church to the declared law of the country, nor renounce the exclusive advantages, which, by the self-same law of the country, the Church enjoys. They maintained, that even though the negotiations with the State should fail, the Church would still be entitled to retain the emoluments and advantages which the State confers, and yet continue to enforce her illegal Act, though to the declared injury of the civil rights the State has conferred on others. Nay, they went the length of maintaining, that a Christian Church may do, and ought to do, what no Christian man would ever think of doing, viz., persist in making itself the instrument of wrongfully invading the rights of property; of perpetrating what the civil law pronounces to be injustice and robbery. They maintained, that the Church is not only at liberty, but is bound to continue to act in this civilly illegal manner, and to the hurt and prejudice of parties, whose claim to their peculiar rights rests upon the very same law as that by which those of the Church are secured to her. They asserted for the Church an absolute, authoritative, uncontrolled jurisdiction, not only in the interpretation of her own Acts, viz., *Acts of Assembly;* but in the interpretation of the State's Acts, viz., *Acts of Parliament.* They claimed for her, moreover, an absolute, uncontrolled, and uncontrollable independence in every thing relating to the settlement of ministers, all decisions of the civil courts, and all Acts of the legislature notwithstanding. They likewise contended that the Church has the privilege to define her own powers, both in their nature and their extent, irrespective of all civil consequences; her powers not only as a Church of Christ, but as a National Establishment; her powers not only according to her own conceptions of them, but

according to the constitution of the country of which they declared her to be an authoritative interpreter. In short, they asserted, that there is *nothing* the Church cannot do, provided she thinks it within her own prerogative, and deems it right and proper to be done, *i. e.* provided she can only persuade herself that she may and ought to do it; and while all other courts in the country—courts civil, courts fiscal, courts criminal, must take the laws which regulate their procedure from the State, the courts ecclesiastical, it is maintained, though owing their existence *as courts of the country* to the State alone, and though claiming the privilege of interpreting the State's laws, can be controlled in nothing but by the Church herself, (though the very Act by which the Church is established contains a stipulation to the contrary,) however much their decisions may prove destructive of the civil rights which the State has guaranteed by statute to others of her subjects.

These are some of the positions which were taken up by the leaders of the Church. To those who are conversant with the history of the past, some of the principles assumed appeared rather new, and (to be promulgated in the nineteenth century,) were sufficiently startling. How far they can be reconciled with Scripture truth, with constitutional law, with the possible, or at least the permanent existence of an established Church, will form the subject of our future inquiry. But what I would fix your notice upon at present, is, the effect which the announcement of such principles naturally had upon the negotiations of the Church, with a view to have her Veto Act legalised. Even on the supposition that these principles were theoretically correct; where was the necessity for setting them forth in a way that was fitted to alarm, as it did alarm, all reflecting minds throughout the country? And if there was any body of men, whom it was peculiarly desirable not to prejudice against the Church's reasonable demands, (because they alone could grant them,) it was our statesmen and legislators; and yet if any thing could have been devised, better fitted than another, to excite both jealousy and disgust among all who know the principles of good government and consistent legislation, it was the peculiarly ill-timed assertion of the above claims. Plain people naturally asked, "Why pass a new act of Parliament if it is to be dealt with as the former?—if the Church is to have the power, not only to interpret it as she pleases, but virtually to set it aside whenever she thinks fit?" Accordingly, you may recollect, that though negotiations were carried on with both the great parties in the state for a period of more than two years, it was without the slightest measure of success. About twelve months ago, it became apparent to many, that the prospect of the Veto ever becoming the law of the country was utterly hopeless, and it was then that several ministers from different presbyteries in the synod of Glasgow and Ayr, met together to consult and deliberate, as to what was duty in the then existing state of things.* They agreed

* To prevent misconception, it may be right to state, that this movement was long previous to, and altogether unconnected with that in which Dr. Leishman and others took a part, and which had an exclusive reference to Sir George Sinclair's scheme of adjustment.

on the following DECLARATION; which I insert at length, because, having been concerned in drawing it up, it embodies, (very much in my own language,) the sentiments I have all along held, and still entertain, on the most material points of this controversy.

## "DECLARATION REGARDING THE VETO ACT.

"WE, the undersigned, Ministers of the Church of Scotland, viewing with apprehension and alarm, the present critical position of our National Establishment, have resolved, after anxious and mature consideration, to make the following DECLARATION.

"I. Believing that a National Church should be based on the affections of the people, we are prepared to employ every constitutional means in our power, to procure from the legislature an enactment, which shall confer on the members of our Church that due influence in the settlement of their ministers, which (independently of higher considerations,) we hold to be, under Providence, one of the best securities for the efficiency and permanency of a religious establishment.

"II. We are fully persuaded, however, that a very formidable obstacle will be thrown in the way of obtaining such an enactment, by any farther attempt on the part of the Church to maintain in force the 'Act of Assembly, 1835, anent Calls,' commonly termed the Veto Law.

"Adherence to that measure was long defended on the ground, that its repeal would have interfered with the negotiations that have been carried on for these two years past, with a view to obtain its ratification by parliament. But as every reasonable hope of its becoming the law of the land has now vanished, we cannot refrain from expressing our deep and earnest conviction, that any longer delay will only increase and aggravate the embarrassments that unhappily exist. Having failed in obtaining the concurrence of the civil authorities, both judicial and legislative, in her views of a matter which unquestionably involves *civil rights secured by civil statute*, the Church ought to abrogate a law which she adopted in the honest persuasion that it lay within her constitutional prerogative—which she certainly would not have passed could she have anticipated its lamentable consequences—and which, (as she is powerless to enforce it without the co-operation of the state,) amounts to a virtual subversion of the establishment in every parish where it is resisted. As it was the first source of our difficulties, we believe it to be a great hinderance to their removal; and we therefore feel ourselves called on to endeavour by every proper effort to procure its speedy abolition.

"III. Though we are deeply sensible of the great advantages which our venerable Establishment has been the means of conferring upon the country, and are anxious to see its benefits extended and perpetuated, we could not consent to purchase them at the expense of principle, or the sacrifice of conscience. But neither dare we incur the fearful responsibility of hazarding the existence of an institution, which is the noblest birthright of the Scottish people, by fruitless adherence to a measure, which is not alleged to be of essential neces-

sity, and which may be abandoned without any surrender, either of the legitimate rights of the Christian people, or of that supreme allegiance which we owe to the Church's sole King and Head.

"May He, who 'is not the author of confusion but of peace, as in all churches of the saints,' speedily build up our Zion's breaches, restore harmony to her distracted councils, and yet more and more establish her—a praise in the earth!

"Glasgow, 22d September, 1841."

This document was in course of signature, when it was ascertained that the present government (which had recently taken office) was disposed to bring in some healing measure, and on that account, it was thought advisable to proceed no farther with the Declaration. Accordingly, negotiations did go on for several months between the government and the Non-intrusion Committee in Edinburgh, and it was at one time confidently believed, that by mutual concessions not involving principle, these would be brought to a successful issue. A certain measure was proposed in name of the government, which the Committee said they would regard as a *great boon*, and declared their belief, "that the Church might, and certainly would consent to act under it, and accommodate her ecclesiastical procedure to its provisions." More than that; with a view (as they said) "to accomplish more effectually the object intended," they themselves dictated the terms in which they wished to have the proposed bill expressed. And yet, in the course of one short week thereafter, they abruptly withdrew both their approbation and their consent.

In so acting, they surely incurred a fearful responsibility; for they thereby shut the door to the prospect of any amicable settlement, and have greatly shaken the confidence of public men in their good faith. Yet these are the very persons who are now raising the cry "that the Church is on the verge of ruin;" the Church on whose behalf they first accepted, and then rejected, a measure, which they declared would be a "great boon," a boon which they admit might have saved her from ruin. My friends, I do feel that it is difficult to repress the feelings of astonishment and indignation which arise at the contemplation of such vacillation, inconsistency, and gross mismanagement on the part of those into whose hands are committed, under Providence, the destinies of the Church of Scotland. Let any unprejudiced man examine the correspondence which then passed, and he will be convinced, that if the Church of our fathers is to be sacrificed, it will have been sacrificed not for one hair's breadth of principle, but for a few wretched quibbles; and the future historian will write of it, that it was ruined by nothing so much as the utter incompetency for public business of its directing counsellors; the want of foresight, prudence, caution, and consistency—I had almost said—why should I not say? the infatuated recklessness which characterises their every movement.

Since these negotiations were broken off, a new feature has sprung up in the case, by the recent decision of the House of Lords, finding damages due to every illegally rejected presentee. One effect of this decision is, to show how practically untenable is the position

the majority had taken up, viz., that they would enforce their Veto Law, (or any other more stringent measure they are threatening against patronage,) and yet retain their State connection.

The question then is heard on all sides, "What is now to be done?" and it is with the view of submitting to you my views of this question in its more important bearings, that I have commenced these letters.

The opinions which I have been led to form on the subjects of spiritual independence, jurisdiction, and non-intrusion, will be found embraced in the following propositions.

I. That the Lord Jesus Christ is the sole King and Head of his Church, and that he has vested the government of it in office-bearers, who are distinct from the civil magistrate, and who are bound to administer its affairs according to the principles and rules of Christ's Word.

II. That the office-bearers of the Church, though possessing inherent independence, may nevertheless in things non-essential, lawfully consent to a limitation of that independence, provided they conscientiously believe, that their so doing will more effectually promote and secure the great ends of the Christian Institution.

III. That the Church of Scotland, by the terms of her union with the State, did virtually consent to a limitation of her independence in certain matters, both of doctrine and discipline.

IV. That when a question arises between the Church and the State, as to how far the independence of the former is limited by law, the decision of the point cannot rest with either of the two parties. As it does not, on the one hand, lie with the State, nor with those who claim to have received from the State certain civil rights, which they allege the Church is by the terms of her union "bound and astricted" to enforce; so neither, on the other hand, does it rest with the Church itself. It must of necessity lie with a third party, independent of either; and as the terms of the union are contained only in "Acts of Parliament," it follows, that the final authoritative decision of all questions that arise, as to the import of these Acts, much rest with the Supreme Civil Tribunal of the country, to whom the legal interpretation of its constitution in Church and State exclusively belongs.

V. That as that court has declared the Veto Act to be beyond the Church's constitutional power, and the State has refused to legalise it, the Church is bound either to conform its own law to that of the State, as authoritatively declared, or to cease to profit by the countenance and emolument which the State confers.

VI. That the Veto Law, (however in some respects desirable,) is not of such essential necessity as that for its sake alone the advantages of an Establishment should be wantonly thrown away, and the National Church broken up or destroyed,—the more especially as there is no doubt whatever, that by their own properly-directed efforts, the people of Scotland will, in course of time, obtain from the legislature a greater influence in the settlement of their ministers, than they at present possess

In laying before you the proof of these propositions in future letters, I would bespeak, your earnest, candid, and prayerful attention. I hope to be able to convince even some of the prejudiced among you, that the principles laid down are consistent with right reason, with the constitution of this country, and with the word of God. You will find that I am neither an advocate of Erastian error on the one hand, nor of revolutionary violence on the other. To unmodified, unchecked, intrusive patronage, I have ever been a determined foe. I owe nothing to it; I expect nothing from it; and I have no interest whatever in perpetuating its abuses, which I shall rejoice to see reformed, provided only it be done in a legal and constitutional manner. Nor must any of you take up the impression, that though I hold that it is to the courts civil, and not to the courts spiritual, that belongs the interpretation of statute law; I am, therefore, prepared to vindicate the civil court in every step which it has taken towards the Church of Scotland. Far from it! Whenever it has gone out of its own province, (which, in various ways, I conceive it has,) it has erred as grievously as the Church; and there are certain of its encroachments, to which, were the Church of Scotland tamely to submit, it should be no Church of mine. I have already said that I am no party man; yet, as some persons profess to understand these matters better when expressed in party language, for their sake, I may state, that from the party commonly designated as *moderates*, I differ, both as to the degree of influence to be given to the people in the settlement of their ministers, and as to the competency of various interferences of the civil court in matters which I hold to be purely spiritual. On the other hand, I am free to confess, that by education and friendship, by habits and feelings, I am more connected with those who are termed (though perhaps too exclusively,) the *evangelical* party; and I still hold, in common with them, the same general principles of doctrinal belief and ecclesiastical polity,—with one single exception,—(but I admit it to be a momentous one)—I mean the claim they put forth in behalf of the Church, of unlimited independence and uncontrollable jurisdiction *within the State*, though exercised to the illegal limitation or annihilation of rights which the State has by law secured to her own subjects. I am far from ascribing to those who prefer this claim, all the consequences which it appears to me would legitimately flow from its recognition. But when I look at it in the abstract, and in connection with the consequences that have followed, wherever any thing resembling it has been granted in former ages, I must denounce it as an unconstitutional assumption of irresponsible power,—so fraught with danger to a commonwealth; so subversive of civil government, social order, and religious liberty: so dishonest in principle, and so despotic in practice; so deep-dyed with the worst features of the worst times of popish usurpation and priestly tyranny, that (cost the struggle what it may) it is the duty of every patriot, and of every Christian, to resist it, even to the death.

I am,

My Dear Friends,

Your affectionate Pastor,

N. MORREN.

*Greenock, Nov.* 1, 1842.

[THIRD THOUSAND.] [No. II.

# MY CHURCH POLITICS:

IN

# LETTERS TO MY PEOPLE.

BY THE REV. N. MORREN.

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## THE HEADSHIP—ERASTIANISM—THE STRATHBOGIE PRESBYTERY.

My Dear Friends,

In my last Letter, I called your attention to the governing motive by which the Church was actuated in framing and passing what is commonly called the Veto Law. We found, from a variety of considerations adduced, that she adopted that measure, not as one of strict conscience, or essential principle, or indispensable necessity, but simply as an expedient in ecclesiastical polity, which she was advised lay within her power by the law of the country, for imposing a popular check on the exercise of patronage. It could not have been because a majority of her ministers suddenly came to espouse the notion, that proof of the people's consent is an essential requisite, an indispensable condition to the validity of ordination; for, if so, the greater portion of them would have ceased to be ministers by their own showing;—seeing that they themselves had been ordained and inducted without any proof having been asked, or given, as to whether the people dissented from their settlement or not. Nor can it easily be believed, that the motive of the majority in making the law was, that they held the Church's previous practice, (however objectionable on the score of expediency,) to be absolutely sinful. For they themselves had up to that period taken a part in many a settlement, which had been conducted according to that practice;—and there is no doubt whatever that they would have been going on doing the same thing still, had they not obtained a majority in the Church courts, which enabled them to carry their new measure. They had protested indeed, against the old system,

but had still continued (in obedience to their ecclesiastical superiors,) to be active instruments in carrying it out;—a fact which cannot be reconciled with the notion of their holding that system to be absolutely criminal, without implying the severest reproach on their moral character.

That they should, for the first time, have discovered it to be sinful, when their party acquired the ascendency, would be one of these remarkable coincidences by which charity itself is staggered, and at which candour stands aghast.

But we showed you, that these assertions of injudicious friends as to the motives of the majority in passing the Veto Act, would not more reflect on the character and consistency of that majority than they are opposed to historical fact. We proved, (and we are happy to know, that we did so, to the satisfaction even of prejudiced minds,) that that measure did not, strictly speaking, originate *within* the Church at all,—it was forced upon her by the pressure from without; it arose from the demand for popular rights coeval with, and consequent upon the Reform bill,—it was a substitute for a parliamentary measure once contemplated for the regulation of Church patronage in Scotland; it was designed as a means of strengthening the Establishment against the attacks which at that period began to be directed against it by the Voluntary Dissenters. The Church, in short, did not so much view the matter *subjectively*, in its supposed bearing on the validity of ordination; she viewed it *objectively* as a desirable privilege, which she was advised she could of her own authority confer upon the people. And the facts—the incontrovertible facts which follow, viz. that the leaders of the Church, before taking any step in the matter, did earnestly seek for high legal advice, as to the extent of the Church's prerogative; that they fixed, not on the call but on the Veto, as being a less interference with the patron's right; that they would not have ventured to adopt even that, had they known it to be illegal, or could they have foreseen all the direful results which have followed, and still threaten to follow it—affecting the peace, the prosperity, the very existence of the Established Church—the fact, moreover, that in their negotiations with the government, the Church's leaders have once and again expressed their willingness to substitute the discretionary Veto of the Presbytery, for the absolute Veto of the people—all these, and many other considerations which might have been mentioned, prove beyond contradiction and controversy, that the measure in question was not, and could not, in the nature of the case, have been viewed as matter of principle or conscience, and may therefore be abandoned by the Church without the sacrifice of either.

I in the next place brought before you the course which was open to the Church to pursue, when she found that in the judgment of the Supreme Civil Court she had exceeded her constitutional powers, and when, after a protracted negotiation, the legislature refused to ratify her law. The alternative was, either the rescinding of her illegal enactment, or an honourable dissolution of her union with the

State. But to neither of these alternatives would the leaders of the Church consent. They held, that she had a right to retain the State's endowments, and yet set at nought the State's laws; that there is nothing she cannot do, provided *she thinks* it to be within her own prerogative, of which she is the exclusive judge; and on this ground they were continuing stoutly to maintain, that it was competent for them to retain both their Veto Law and their State-connection, when the recent decision of the House of Lords (finding damages due by the Presbytery to every illegally rejected presentee) opened their eyes to a perception of the practically untenable nature of the position which they had taken up, however finely they might theorise upon it. In point of fact, indeed, previously to that decision, and altogether independently of it, the disestablishment of the Church had begun already, in spite of all fine-drawn theories to the contrary. For in what does a national Church differ from a Dissenting body? Only in the civil advantages the State may confer. And who are *de facto* the sole judges of the tenure by which these civil advantages are held? Why, by the Church's own admission, it is the civil courts, unless the legislature interfere to alter the law as by them declared. And though the Church may, doubtless, after the loss of the temporalities of a parish, think fit to settle a man to the spiritual cure, that is no more than might be attempted to be done *with equal show of law*, by any dissenting body in any parish in Scotland. It is pure trifling then to talk of what the Church can do, unless you can show that she can do it not only as a Church of Christ, but as the national Church of this country. In the former capacity, she may do what she pleases; but in the latter capacity, she is, *in point of fact*, limited in certain matters by the law of the country, as interpreted by the law courts; for if she goes beyond that, she in so far ceases to be a national Establishment, because she thereby forfeits its peculiar and distinguishing advantages, which, being purely civil in their nature, are adjudicated upon, and disposed of by the civil courts.

I now proceed to illustrate the propositions which I laid down as containing my views of the Church's present position. My *first* proposition is this, "*That the Lord Jesus Christ is the sole King and Head of his Church, and that he has vested the government of it in office-bearers, who are distinct from the civil magistrate, and who are bound to administer its affairs according to the principles and rules of Christ's word.*" I have not at present to do either with Romanists, who see the earthly head of the Church in the bishop of Rome; or with Episcopalians of the Church of England, who acknowledge the ecclesiastical supremacy of the Sovereign of the country; and I therefore deem it unnecessary to enter on a lengthened demonstration of the proposition now laid down. It is expressed in the language of our Church standards, and its truth can be called in question by no sound Presbyterian. Now this doctrine, the doctrine of "the Headship," as it is called, I hold to be one of vital importance in the Christian scheme, and the denial of it, (either direct or indirect,) to be a very dangerous heresy. But it is that very consi-

deration which ought to incline us to treat a topic so sacred with becoming reverence, and to beware of profaning it by the too frequent an introduction of it into the language of angry debate. We are commanded "to honour the Son even as we honour the Father;" and surely the government and prerogatives of the Mediator are subjects which ought no more to be handled with levity or rashness, than the being and attributes of God.

It was once written and published by an English polemic, that the man who doubts the doctrines of diocesan episcopacy and apostolical succession, is a "downright Atheist." Have you never, my friends, heard language not very different from this nearer home? What is it that, throughout this lamentable controversy, has most tended to open the mouths of scoffers, and to grieve and disgust men of sober, serious minds, but the practice of certain disputants to fulminate their fierce anathemas against all who cannot receive *their* sayings in reference to the matter before us? And yet it is a remarkable circumstance, (as I shall show you by and bye,) that by none is the doctrine of the Headship more grossly and unblushingly trampled upon, than by some of these very persons who are constantly making it the ground of their railing accusations against their brethren.

They not unfrequently allege of those of us who may presume to differ from them, that while we use the same general terms as they in stating the doctrine, we attach to the words a different or covert meaning. Now for myself, I beg to say, that I for one hold the doctrine in the plain, obvious, unambiguous meaning of the terms in which I have stated it, without the least equivocation or the slightest reserve. I do believe that the Lord Jesus Christ is the sole King and Head of his Church, and that he has vested the government of it in office-bearers *who are distinct from the civil magistrate.* So far from wishing to shy or slur over that last clause, I think it enters into the very essence of a right definition of their powers. I hold, that if, on the one hand, *they* are distinct from the civil magistrate, so that he ought not to invade their province; on the other hand, the civil magistrate is just as distinct from *them,* so that they ought not to invade his. It is true that the encroachment of the one party does not justify the encroachment of the other. Still, (as we all admit in the affairs of common life,) in every case of alleged mutual grievance, it is always of great importance to ascertain who was the first aggressor; because, to use a common but expressive phrase, he does not come into court "with clean hands," and has less reason to complain of wrong done, if he has himself set the example by striking the first blow. Now, if it should so have happened, that the Church courts did, *first of all,* in forgetfulness of their Master's declaration, "My kingdom is not of this world," and in violation of the express command of their own Confession of Faith, "not to intermeddle with civil affairs which concern the commonwealth," (Confession, chap. xxxi.;)—if, without the shadow of authority from the Word of God, or the constitution of the country, they set themselves up as authoritative, legal, recognized interpreters of the Acts of a purely civil

body, (viz., the British Parliament,) then they just lost sight of the very fundamental principle now before us, viz., that as office-bearers of the Church they are distinct from the civil magistrate.

Nor do I at all wish to evade discussion of the concluding clause of the proposition, viz. that the Church's office-bearers are bound to administer its affairs according to the principles and rules of Christ's word. This, indeed, is no more than what is the bounden duty of all men, whatever their stations and relations may be, seeing that He who is the head of the Church, is also the head of the State,—is the head of the universe, for all authority is committed to him in heaven and on earth. And whosoever therefore acts contrary to the principles and rules of his word, commits sin. But the government of his Church is doubtless, (as our Confession styles it,) a special ordinance of Christ for special ends, and they who are entrusted with it are bound to consult his will in all things, in so far as he has been pleased to reveal it. But it is of great importance to keep in view that though Christ, the head of the Church, be infallible, it does not follow that anything like infallibility belongs to those who claim to rule for him on the earth. They are not infallible as individuals;—they are not infallible when acting in a body, for as the Confession again asserts,—"All synods or councils since the apostles' time, whether general or particular, may err, and have erred,"—a consideration which should induce them to promulgate all their opinions and pronounce all their judgments with becoming diffidence and humility, and to advance all their claims to *power*, (more especially *power within the State*,) under a deep sense of the danger of their abusing it if uncontrolled. What has been the besetting sin of churchmen in every age? What but the love of power? And what are our churchmen but *men*, weak, erring, fallible men, subject to like passions, and encompassed with the same infirmities as their fellows?

Accordingly, you find that the New Testament is full of hints and admonitions to them, on these and such like points. They are not to be "lords over God's heritage;" they are not to have dominion over the people's faith, or (as the word means,) they are not to *lord it over* them in respect to their faith; they are not to make the people receive their dogmas as *oracles;* and instead of keeping them for years in a vortex of unprofitable controversy, they are to be "helpers of their spiritual joy." In common with other Christians, they are to walk in wisdom towards them who are *without*, and not to let their good be evil spoken of, remembering that all things lawful are not always expedient. As members of the state they are to lead quiet and peaceable lives in all godliness and honesty. They are to act indeed as Christ's freemen, and to stand fast in the liberty wherewith He has made them free; but though free, they are not to use their freedom as a "cloak of maliciousness," or "an occasion to the flesh,"* that is, they are not to employ any spiritual liberty they may claim as an occasion or pretext for interfering with the declared

* 1 Pet. ii. 16; Gal. v. 13.

statutory rights of their fellow-subjects, far less as the means of gratifying party spirit or private malice and revenge. They are to "render to all their dues," and not make the very powers which the state has conferred on them, the instruments of illegally limiting or nullifying the privileges she has conferred upon others. In a word, while they are bound to stand up for the legitimate rights of their Lord and Master, they are, in so doing, to beware of self-seeking and self-exaltation, self-complacency and self-confidence. They are to admit the possibility of their going wrong, and ought not to be unwilling to retrace a false step, through obstinacy or pride. Above all things, they are to beware of confounding the power and prerogatives of Christ the Mediator with their own selfish aims, their own ambitious aspirings, their own restless attempts at domination, either spiritual or civil, lest unhappily, in professing to seek to exalt Him, they are rather found seeking to place SELF on his throne, and to wield the power they claim for Christ chiefly for themselves.

Now with respect to the rules for the government and discipline of the Church, its office-bearers are left to be guided by the views they draw from the New Testament. Their duty is to study that "law" of Christ's house, with prayer for divine teaching, and to act in nothing contrary to that divine "testimony." It is known, however, by all who have studied the subject with attention, availing themselves of the lights furnished by the principles of correct scripture-interpretation, and the early history of the Church, that while there are certain general principles of spiritual polity which are never to be departed from, there is at the same time a large discretionary power given to the Church's governors, to act according to circumstances, as Christian prudence and Christian expediency may dictate; and, my friends, in the latitude of thought and freedom of action thus afforded them, we may discern much of the wisdom of the Church's great Head. There are many things in the arrangements of Church government which may suit the genius of one country, and may be ill adapted to that of another; yea, may be differently suited to the same country at different periods of its history. There may be certain things, moreover, to which there would be little objection were they the rule of a Dissenting body, but which would be of very questionable tendency in a Church connected with the State. There are even things which might be admitted without harm in an Established Church under a republic or democracy, which it might be of dangerous consequence to insist upon in a Church connected with a limited but mixed monarchy like ours. Now, the Church's own office-bearers are on these points left to their own sense of duty, regulated by reason, conscience, and the written word; and they are not to be condemned as violating their allegiance to the Church's Head, by those who see some of the arrangements they acquiesce in or approve of in a different light from them. But I will tell you, my friends, who are justly to be condemned, and cannot be too severely condemned by all honest men,—it is they who regard any of these arrangements in Church government as anti-scriptural and sinful,

contrary to the mind and will of Christ, and a robbery of the purchased rights of Christ's people—and yet holding these views, were themselves admitted to office in the Church, and retain office with all its emoluments and prerogatives, by virtue of the very system they so loudly denounce as criminal and impious in the case of others.

If a man thinks that lay-patronage (however objectionable in other respects,) is not absolutely contrary to the word of God, there is no inconsistency in his receiving and retaining office in the Church by means of it—even though he may see it his duty, after his admission, to exert himself in a constitutional way to have patronage modified or even abolished. But what shall we say of the man who says patronage is *Erastian*, (in the party sense of the term,) *i. e.* a practical denial of the supreme Headship of Christ:—the man who maintains the system to be not merely *unscriptural* (*i. e.* without scripture warrant,) but *anti-scriptural*, *i. e.* directly opposed to the revealed will of the Master;—the man who believes in the *divine* right of the people to choose their own pastors and rulers:—what shall we say of a man having, with views like these, thrust himself into the Church by the channel of patronage, and taken part in the settlement of others, who were introduced by the same criminal, Erastian, anti-scriptural medium? In vain does he tell us, that along with his presentation there was a call from the people. Even though that call had been signed by a majority of the parish, (which in nine cases out of ten it was not,) the question always recurs, How did he get at the call, but in an Erastian, anti-scriptural, sinful manner? There were two stages in his elevation, as in that of a man who has reached the second story of an edifice. He boasts of having arrived at the second stage by a proper and lawful access; but how he did get at the first stage, without reaching which he never could have attained the second? Why, by a method which, he says, robbed the people of their *divine* right to a free election, by limiting their choice to himself. If the people do possess such a right, surely it is not less valuable than the use of the cup in the Eucharist, and yet, (as you are aware,) the denial of that privilege to the laity was one of the reasons for our reforming ancestors leaving the church of Rome. We say then, that the man who entertains these sentiments, and yet retains a lucrative office in what he deems an Erastian Church, is in a position the glaring inconsistencies and palpable dishonesty of which, are obvious to all eyes but his own, and out of which the most ingenious sophistry will not extricate him. If his own principles are correct, he is a self-convicted Erastian, a rebel traitor to the Church's king; he has daringly plucked the crown from the Mediator's head, and is receiving what he must hold to be the wages of corruption and unrighteousness; in short, he is a heretic of the description of those of whom the apostle says that the sin is the more aggravated, "because he is condemned of himself."

But, having used the magical term *Erastian*, we must dwell upon it a little; it is closely connected with the subject we are now handling. There is nothing you more frequently hear now-a days than

the expressions: "Such a sentiment is *Erastian;* do not listen to that man, he is an *Erastian.*" These are high-sounding terms of abusive reproach, which many find it convenient to substitute for argument, and which do pass current as good argument with the vulgar and illiterate; for just in proportion to a person's want of comprehension of the meaning of an opprobrious epithet, does he magnify in his own mind the reproach he would thereby convey. We must therefore show you, who, and what an Erastian really is. Erastus himself was a German physician, who flourished soon after the Reformation, and having seen, and perhaps felt, the gross abuse of Church power both among Catholics and Protestants, was driven into various extreme and absurd notions; such as, that all are to be admitted indiscriminately to Church privileges who apply for them; that the Church's office-bearers have nothing whatever to do with the misconduct of its members: that the censure of every kind of vice is the exclusive province of the civil magistrate, &c. In the widest sense of the term, there is reason to believe, that the only Erastian who ever lived was Erastus himself. But in the following (*i. e.* the seventeenth) century, when the first Covenanters had succeeded in restoring Presbytery in Scotland, and had obtained also a wide footing for it in England, the celebrated John Selden and others, members of the English House of Commons, and the Westminster Assembly of Divines,* thought they saw very great danger to the commonwealth from the unlimited independence and uncontrolled jurisdiction *within the state*, claimed by Presbytery. They feared that, as Milton says—

"New *Presbyter* was but old *Priest* writ large,"

and they therefore advocated certain views regarding the power of the civil magistrate in ecclesiastical matters, which from being in some respects the same as those of Erastus, were called Erastian. Now, my friends, amid all the outcry that has of late years been raised on the subject, it would be a curious circumstance if it should turn out, that there were Erastians, able and influential Erastians, actively concerned in the drawing up of our own Confession of Faith, and that before that document was finally sanctioned, it had to pass through the searching examination of the Long Parliament of England, most of whom were deeply tinctured with the same principles. And yet these are historical facts which cannot be gainsaid; for we find, that in the process of drawing the Confession up, and finally revising it, there was a constant struggle between these persons and their opponents—a struggle which frequently ended (as most struggles of the kind commonly do) in a friendly compromise, not involving, however, the sacrifice of essential principle, at least on the part of the majority. On the main question of a Church-government, distinct from that of the civil

* Selden was one of the lay-assessors. The Assembly was prohibited from assuming any ecclesiastical powers not delegated to them by parliament, and in the event of any difference of opinion arising among themselves, either of the two Houses was to direct their proceedings. For proof of the facts stated in the text, the reader is referred to the recent edition of *Baillie's* Letters, vol. ii. p. 267, 307, 346, &c., or *Aiton's* Life of Alexander Henderson, p. 520—580.

magistrate, as well as the exclusion of the latter from the administration of the word and sacraments, and the power of the keys, (*i. e.* the exercise of Church discipline,) the Erastians were defeated. But it was with the utmost difficulty, that those of them who were in Parliament could be brought to consent to the keeping back ignorant and scandalous persons from the sacraments. They got a vote passed for there being a power of appeal from the General Assembly to the Parliament, and this even the Scottish Commissioners would have been willing to allow, had it been limited to "complaints of injurious proceeding." They appointed *civil* commissioners in every county, to take cognizance of ecclesiastical causes, and especially of certain descriptions of scandals to be brought before them by Kirk-sessions, and reported by them with their judgment to Parliament; and here again the Scottish delegates were inclined to acquiesce, provided the scandals were to be reported to Parliament by the letters of the eldership, or in any other way but what was proposed. Why do I mention these facts? Not certainly to prove that our Confession *is* Erastian, (for as to one of the fundamental principles of the system, I have already said that it is not,) but to show you that Erastian influence, whether for good or evil, was busily exerted on its compilation; a circumstance which does not make it one whit the better or the worse, unless in so far as the tenets we find actually embodied in it are or are not agreeable to the Word of God.

The assertions I have now made, are confirmed by *internal* evidence. Let any unprejudiced man carefully read this Confession, in connection with the historical facts I have now stated; let him take along with him especially the circumstance that the production of it was the result of the often conflicting, but in the end mainly accordant opinions of different ecclesiastical parties, each striving to have their own views represented in it; and he will discover in various parts of it, and especially in the famous xxiii. chapter, manifest traces of the influence of Selden, Prynne, Whitelock, and their coadjutors. Thus, while it is asserted, that the civil magistrate may not assume to himself administration of the word and sacraments, or the power of the keys of the kingdom of heaven; (which power is afterwards described in the xxx. chapter, as consisting in the admission to, and exclusion from, Church privileges;) yet, it is added, "he hath authority, and it is his duty to take order that unity and peace be preserved in the Church, that the truth of God be kept pure and entire, that all blasphemies and heresies be suppressed, all corruptions and abuses in worship and discipline prevented or reformed, and all the ordinances of God duly settled, administered, and observed; for the better effecting whereof, he hath power to call Synods, to be present at them, and to provide, that whatsoever is transacted in them be according to the mind of God." Then it is said in the next section, that it is the duty of people (among other things) to obey the lawful commands of magistrates, and to be subject to their authority for conscience sake; and to prevent all misconception, it is added, that "infidelity or difference in religion, doth not make void the magistrates' just and lawful authority, nor free the people from their due obedience

to him *from which ecclesiastical persons are not exempted.*" Now, if the first part of this extract explodes Erastian error, there is no doubt that a large portion of it is made up of what I fear must be called Erastian truth; and if truth it be, it is none the worse for having been held by men called Erastians. Call it then Erastian—call it Laudian—call it Beelzebub if you will, it is truth which every minister and elder of the Church of Scotland stands sworn and engaged to profess, maintain, and defend; for while we have disowned and renounced all Erastian errors, we have not disowned one particle of Erastian truth; we have not *yet*, at least, renounced this xxiii. chap. of our Confession, the introduction of part of which, there is presumptive evidence to show, was very much the work of the Erastian party.

But before leaving this bug-bear of Erastianism, I must remind you of the curious fact, that among the other crude, undigested, incongruous, constantly-shifting schemes brought forward by the Church's younger, more restless, and Jehu-like leaders, there was a proposal for the simultaneous erection, throughout Scotland, of certain wooden fabrics, to be the resort of a new Secession, and the name which this schismatical Church was to bear was, "the NON-ERASTIAN Church of Scotland." Now, of the many singular phenomena we are likely to witness in this stirring age, certainly one of the most extraordinary would be, to see a Church calling itself by way of distinction, *Non-Erastian*, and yet basing itself upon this Confession of Faith. Not that the Confession *is* Erastian, but neither can it be distinctively called Non-Erastian; and to designate it or any Church founded on it by that name, would be a complete abuse of words, showing only the gross ignorance of the blind guides who mislead. If there are those who intend to set up any such Church, let them first have the candour to tell the people that they must have a new Confession of Faith, for certainly the old one will not answer their purpose, until at least, like the "New Lights" of the Secession (whose principles they are rapidly but unconsciously embracing,) they agree to expunge this portion of it. Will the Old Light brethren, who lately rejoined us, and who stood up so manfully for the integrity of the Confession, now form part of a Church whose "Testimony" will be substantially and practically that of the "New Lights?"

But in returning from this apparent digression, (though in reality it has a close connection with the subject,) I shall explain to you the idea which I have formed of the line which separates the civil power from the ecclesiastical, by selecting two distinct illustrations, —one case, in which, during the course of the present struggle, I humbly conceive the civil magistrate *has* gone beyond his scriptural and constitutional province; and another case, in which, though loudly accused of having done so, to my apprehension he has *not*.

With regard to the former point, I presume that all of you will allow, that there *may* be such a thing as the unwarranted encroachment of the court civil on the court spiritual,—that it is *possible* for the civil magistrate to invade and trample upon the rights of ecclesiastical

judicatories. Is there one of you who will venture to say, that he is certain this has in no single instance been done of late years? Is it not a circumstance of itself fitted to excite suspicion, that there has scarcely been one application made to the civil court in opposition to the Church's actings, which that court has not entertained, and immediately granted, almost as a matter of course. The simple fact then of their so frequent, ready, I had almost said, eager interference, is a thing of which every sound Churchman ought to be very jealous, yes, and every British subject also; for if that interference be unauthorised by statute law, it is a serious inroad on the British constitution, and may serve as a precedent and a pretext for infringing on other corporate rights besides those of the Church, What is called "common law," may be made an engine of great oppression; and I for one have as great a dislike to judge-made Ecclesiastical law, as to Church-made civil law. In this contest, moreover, the Church is practically the weaker party, and is therefore the more entitled to public sympathy, which I am confident she would have received to a much greater extent than she does, were there not a general, and I am sorry to say, too well founded an impression abroad, that she was the first aggressor. Indeed, one of the most distressing things in the whole of this controversy, is, that the Church, by persisting in grasping at what is beyond her reach and does not belong to her, necessarily puts herself more in the way of being interfered with by the civil court than could ever have happened, and I may safely say, than ever would have happened, had she kept within the sphere allotted to her by the constitution. Still this does not justify the gross invasion of any of her spiritual prerogatives; to apply a common proverb, because you think your neighbour takes from you an inch, that gives you no right to take from him an ell. The unauthorised and unconstitutional encroachments of the civil power are not the less dangerous, because the Church's own attempt at usurpation was the occasion of their being made.

Now, that there has been no excess of jurisdiction, no wanton stretch of authority on the part of the civil court in the Church controversy, cannot well be affirmed by any reasonable man. Need I remind you of the indiscriminate granting of all manner of *interdicts**—interdicts granted even before the court had ascertained its jurisdiction in the matter at all—interdicts granted only to be broken, and which have tended to bring the law-courts and law itself into contempt. Need I remind you of the injunctions and prohibitions addressed to ministers, elders, and Church courts in reference to their "administration of the word and sacraments," and the infliction of "Church censures;" matters from the handling of which, the civil magistrate is, by the Confession of Faith, expressly excluded,

* For the Court of Session to claim and exercise a *prima facie* jurisdiction in *any* matter that may be brought before it, even though it should afterwards be found to be beyond its province, is a kind of temporary, conditional, constructive usurpation, which is of very dangerous tendency to the Church's liberties.

and for intermeddling with which, (at least in this direct manner,) he has not the shadow of right by any statute of the realm. And there is the less reason for his attempting any such interference, because (as the late decision of the House of Lords has shown in the case of Auchterarder) the civil court has in its own hands ample and sufficient means of redressing civil wrongs, (*by whomsoever inflicted,*) by the simple application of competent and effectual *civil* remedies, without at all going out of its own constitutional province.

But the case I have more particularly in my eye, as affording the instance of an incompetent and unconstitutional interference of the civil court, is the extent of power it assumed (power *spiritual* as well as civil) in the case of certain ministers of the Presbytery of Strathbogie. These gentlemen were deposed by the General Assembly of 1841,—for disobeying the law of the Church, says one party; for obeying the law of the land, says another. With the merits or demerits of the sentence pronounced on them, we have at present nothing to do, but simply with the *kind of redress* they sought under it. That sentence had obviously a twofold aspect, according as you view it in its connection with the law of Christ, which was purely *spiritual;* or in its connection with the law of the country, which was purely *civil*—the one affecting their spiritual character and official *status* as ministers of Christ, the other affecting their temporal emoluments, and all their other privileges as ministers of the national Establishment. If they thought (looking at the sentence in its former aspect) that it was an unrighteous one, as before the Lord Jesus, the sole King and Head of the Church, by virtue of whose authority *alone* ordination had been conferred on them by the laying on of the hands of the Presbytery, they might then simply have protested, as did the Fathers of the Secession, that they are still ministers of the Gospel, notwithstanding of their unlawful deposition; appealing (as did Gillespie, the Father of the Relief) to the judgment-seat of Christ. And with respect to all their civil prerogatives, they had the civil courts to appeal to for protection, in the event of any one endeavouring to molest them in the possession. But the course they thought fit to adopt was different from this, and one which, whatever may have been their reasons for pursuing it, has assuredly proved a stumbling-block to many a serious and unprejudiced mind; has materially injured their own cause in the religious world; has stifled the sympathy, alienated the confidence, and prevented the co-operation which in many quarters they might have received in their resistance to ecclesiastical tyranny; has mightily strengthened the hands of their opponents, and in the same proportion weakened their own; and next to the violent courses of some on the other side, has done more to widen the breach in the Church, than any other circumstance that has yet occurred. What was the course they pursued? Why they went straight to the civil court, asking them *simpliciter*, to review and reverse the sentence of deposition, and that court, accepting without scruple a jurisdiction which they certainly had never exercised before, granted the demand in its full extent.

Now, I am far indeed from thinking, that the point at issue is free from difficulties. I admit that many plausible things may be advanced to vindicate the course that was adopted; and those who hold sacred the ordinary forms and routine technicalities of our law-courts, will not easily be persuaded that any thing else could have been done than what was done. To others, it may seem one of the cases in which it is next to impossible to trace out the line of demarcation between what is civil and what is spiritual. But even though it were so, it would not thence follow, that the civil court was justified in its unqualified interference. Be it a case of doubt—if a lawyer gives the benefit of his doubt to his own court, I know not why a Churchman should not give the benefit of his doubt to the Church. But if, on the other hand, the line of distinction can be drawn with some degree of accuracy, and if the civil court has overstepped its own boundary by only a single inch, then it is all the more needful for the Church to repel the encroachment; to plant its foot firm at the boundary line; to contend that the offices of the civil and spiritual magistrate shall not be allowed to merge in the same persons, and that the power of the sword and the power of the keys shall not be wielded by the same hands.

Are then the sentences of the ecclesiastical courts to be subject to the direct, immediate, complete, final review of the civil court, as if it were a court of appeal in matters ecclesiastical? That is the question—and it seems to me *the* question of a standing or falling Church in this country. Now, in giving you my reply to that question, I would beg you to observe, that I am not one of those who think, that *in no case* can the sentences of an ecclesiastical judicatory (even those which inflict Church-censures) be reviewed by the civil court; but then let us distinguish between the reviewing a sentence as to the *form*, and the reviewing it as to the *merits* and *substance*. For example, there is an Act of parliament, 1707, (under which the Church has consented to continue established for more than a hundred years)—which "authorises and appoints the court of session to cognosce and determine in all affairs and causes, which formerly belonged to the jurisdiction of the commissioners for the plantation of kirks, and erection of parishes." But, if the Church, overlooking this Act, or mistaking its legal import, has been illegally erecting parishes of her own authority, and admitting the ministers and elders of these parishes into the various Ecclesiastical judicatories;—there can be no question that the civil court may competently find, that these not being legally erected parishes, the ministers and elders were illegally received into the Church courts of the country; that the constitution of these courts was consequently vitiated by their introduction; and that from that period, all their sentences (including even Church censures,) must be held to be null and void. The case supposed is, as you are aware, now in course of being tried at law; and in the event of its being decided against the Church, there are various persons who have been deposed for drunkenness, theft, and other crimes, who will probably take advantage of the decision, to procure a reversal of the sentences pronounced against them.

But even if the civil court should *for that reason* reverse these sentences, it would be a gross mis-statement of fact, fitted only to mislead and inflame the vulgar, to affirm, (as do some,) that the court of session would be protecting thieves and drunkards. Every man of sense sees it would be doing no such thing;—it would be merely finding that these persons had been tried by courts, upon whose constitution it is authorised to pronounce by statute law; and finding that they had been tried by illegally constituted tribunals, it would pronounce them to have been *in point of form* illegally condemned. But if now, the civil court, not satisfied with deciding the case as to this point of *form*, were to enter into the *merits*,—if they were to take it upon them to examine the charges brought against one of these men, and hear the evidence for and against him, and pronounce a sentence either confirming or reversing the judgment of the General Assembly,—that, you must see, would be a direct interference with the inherent functions, the native unalienable prerogatives of the Church, which would cut up its independent spiritual jurisdiction root and branch, and could not be submitted to without the forfeiture of its character as a Church of Christ,

But it may be alleged, that while this holds good, and must be admitted as a general principle, "that civil courts cannot take off spiritual censures," (at least, when inflicted by legally constituted Church courts,)—still there is this speciality in the case of the deposed ministers of Strathbogie, that their only crime was obeying the law of the country, and that the ends of justice required that the civil court should review the sentence on them, not only in the form, but on the merits, otherwise it could not extend to them the *civil* protection to which they were entitled, Well, if the distinction here drawn between *spiritual* redress and *civil* protection had been carefully made by the deposed brethren, in their application to the court, and by the court in its judgment, there would have been less evil created by the interference; because with that saving reservation, it could not so readily have been drawn into a precedent in other cases, where the same plea of illegality cannot be urged. And would it not have been enough for all the substantial ends of justice to have held, that even in a case like that of Strathbogie, the civil court would only go so far into the merits, as to enable it to dispose of the application merely in its *civil* effects? But when that court proceeded to review and reverse *simpliciter* the sentence of deposition in all its bearings and consequences, without distinction, and without reserve, it certainly did seem to claim for itself a power which the Word of God and the Confession of Faith have most plainly denied it, and which the law of the country has no where bestowed. The Court of Session reversed the sentence of deposition, by the technical process of suspension and interdict, in precisely the same terms which it would have used in reversing the sentence of any inferior civil court, from which there lies to it a recognised constitutional appeal. What was that but saying, "We sustain this your appeal; we reverse the sentence on the merits: we authoritatively declare that you are still ministers of the Gospel; we

continue to you by virtue of the powers vested in us, the administration of word and sacraments, and all other spiritual functions of which that sentence would deprive you; we virtually re-ordain you, and we authorise you as re-ordained men, to go on exercising the office of the holy ministry as heretofore." But how could a body of laymen, however dignified in station, clothe with the ministerial character those who had been deprived of it by a competent court? how could they restore that which they never could have imparted? The inconsistency of their procedure becomes at once apparent, when you contrast it with what they did in the case of Auchterarder. They first judicially declared, that the Presbytery by rejecting the presentee had acted illegally; and this they had a perfect right to declare. They have since found that both he and the patron, on account of that illegal rejection, are entitled to damages, and that also (whether right or wrong in point of law) was perfectly within their constitutional province to award. But what would you have thought, if instead of this they had actually proposed to take him on trial, and ordain him themselves? Would you have said that that was agreeable either to the Word of God or the constitution of the country? And where, I beg to ask you, is the essential difference between conferring ordination and restoring it—between saying to one man, "We make and admit you a minister," and to another "We re-make and re-admit you?" If these gentlemen were unlawfully deposed as in the sight of Christ, they are doubtless his ministers still; but if otherwise, then no judgment of a civil court, no Act of Parliament, no power on earth can give them ordination, (or what amounts to the same thing,) can enable them to retain it, if they have been deprived of it by a competent and legally constituted court.

But while I regard that procedure as an invasive usurpation of the unalienable rights of the Church,—I hold it at the same time to be wholly unconstitutional, because unauthorised by any statute of the realm. In the *settlement* of ministers, the civil court has a certain recognized jurisdiction, arising out of the law of patronage, but it has nothing of the same kind in cases of suspension or deposition, unless to the modified extent we above defined. Does it any where find a right to depose or excommunicate a minister? No more will it find any right to take off either deposition or excommunication, unless the ecclesiastical court that pronounced the sentence has been illegally constituted. There may indeed, be extreme cases, like that of Strathbogie, in which the civil court may bring the matter so far within the scope of its own jurisdiction as to redress manifest *civil wrong*, yet that can only be done by the legitimate application of a *civil remedy;* which the taking off a spiritual censure is not. I hold therefore, that for any civil court to pretend to restore to the exercise of spiritual functions persons who have been deprived of them by a competent tribunal, is as inept and incongruous, as it would be for a Church court to grant a decreet for civil damages, or to pretend to reverse a sentence of the court of Justiciary on a condemned criminal. I believe, that the free and unfettered

exercise of Church discipline is absolutely necessary to the efficient and honourable existence of a Church of Christ; and if the Church of Scotland is to bedeprived of that privilege, by having her sentences subject to the review of the civil court, and her real independent jurisdiction laid prostrate at the foot of the civil power, then it is easy to foresee that "her time is near at hand, and her days shall not be prolonged."

In my next Letter, I shall consider the recent decision of the House of Lords in the case of Auchterarder.

I am,

My Dear Friends,

Your affectionate Pastor,

N. MORREN.

*Greenock, Nov. 5*, 1842.

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[THIRD THOUSAND.] [No. III.

# MY CHURCH POLITICS:

IN

# LETTERS TO MY PEOPLE.

BY THE REV. N. MORREN.

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## THE AUCHTERARDER DAMAGES CASE.

My Dear Friends,

The subject which I have now to bring before you is one which may involve not the existence only—but what is of far greater consequence and value,—the consistency, the honour, the integrity, the truth—the *character*, in short, of the Scottish Church. The momentous question has arisen: What is the position which she ought to take up, in consequence of the recent decision of the House of Lords? There are several honourable courses open to her to pursue, but there is *one* which it is my present business to show you she cannot adopt without dishonour and disgrace. I allude to the pretext that the decision in question is an invasion of her rightful jurisdiction, because a trespass on the spiritual province. Should she unfortunately be induced to put forward any such allegation, how painful will it be to all her friends and well-wishers to see her convicted out of her own mouth of inconsistency, from that averment being found directly opposed to her own solemn and recorded admissions. She now stands on the brink of a precipice; the next step she takes will seal her character, and in sealing her character, will justly seal her doom. May she be guided to her decision by the light of honesty and truth!

In explaining to you my views of the power of the civil magistrate in things ecclesiastical, I remarked that the abstract principle would be best illustrated by examples drawn from the present controversy:—one in which the magistrate seems to me to have overstepped his lawful jurisdiction, and the other in which he has not. The case first adduced was the unreserved and unqualified review and reversal of

the sentence of deposition on the Strathbogie ministers by the Court of Session Admitting as I do the claim these gentlemen had to the amplest civil protection, and the right of the civil court to grant them that protection to the full, I am, nevertheless, of opinion that one step beyond that (whether in reality or in appearance) it had no power to go, either by the law of the country or by the law of Christ.

But if, on the one hand, I think the civil court has in this respect gone beyond its *power* in every sense of that term, (meaning thereby not only its *authority* by the constitution, but its *ability* in the nature of things,) I am equally clear on the other hand, that in awarding civil damages to a presentee whom it had found to have been illegally rejected, it has acted most strictly and severely within the province assigned to it by the Word of God, by the Confession of Faith, and by the statute law of this and every other well-governed realm.*

Now, my friends, if you would come to a clear and unbiassed judgment on this new question, you must form and fix in your minds a correct idea of the real facts of the case, and an accurate perception of what the House of Lords has really done in the matter; for I am sorry to say that there are attempts to spread abroad misconception on these points. The facts are few, simple, and intelligible. A presentee having been rejected by a Presbytery for no other reason than the people's dissent, applied to the civil court to have it declared that the Presbytery by refusing, for that reason alone, to take him on trials with a view to ordination, had acted illegally, (because contrary to their duty as laid down in the statute,) and to his prejudice and hurt. It was so found and declared accordingly, *the church acquiescing in the judgment in so far as it might affect civil rights.* The Presbytery, however, having still persisted in their refusal, the presentee went back to the civil court for civil redress; and that court has now decided that, after their former judgment, it was not within the competency of the Presbytery to refuse or decline to take the presentee on trials, that they were not legally entitled to do so, and that this refusal forms the ground of damages in law. Now, I beg you carefully to mark, that this is the amount of all that the House of Lords has done in the matter. Did that court, pretending to exercise spiritual functions and to wield the "power of the keys," presume to say, "We will make trial of the presentee ourselves?" No. Did they even address any order or decerniture to the Presbytery enjoining them to try him, and if qualified, to ordain and admit him? They did not;—for one of the pleas in law urged by the counsel for the Church in bar of the action of damages was, that such decerniture had not yet been given, and that it was not competent for any civil court to grant it. Did the House of Lords say to the Presbytery, "We will of our own authority compel you to take this man on trials, and in the event of your recusancy we will visit you with the heaviest pains and penalties, such as imprisonment and fine? No, they said no such thing; for there is an essential difference between a *fine*, which is a public criminal forfeiture for alleged misconduct, and *damages*, which is a purely civil award to a private party, given in compensation for the infliction of civil wrong.

* It is true that damages have also been found due to the Patron, but in order to simplify the argument, I confine myself to the case of the presentee.

The House of Lords could not be said to have even "reviewed" the Presbytery's judgment in the technical sense of that word, unless as to the civil effects;—far less to have altered it or made it void. They have indeed recorded anew their opinion of its illegality, which by the Church's own admission they were perfectly entitled to do;—and they say, "Do with your own judgment what you please—only you must take the consequences." They gave no opinion whatever, because they were not called on to give any, upon abstract questions of Church government or Church discipline. They expressed not a single sentiment either in their judgment or in their speeches, directly or by implication, against the Headship of Christ, or any doctrine of the Bible or Confession, which legitimately flows from it. What they said to the Presbytery, and through them to the Church, was simply this, "We found before and we told you, that by this line of conduct you are acting illegally, and to the hurt and prejudice of others, whose civil rights we are as much bound to protect as we are bound to protect yours should they be assailed;—and we now find and tell you, that the persons you have injured by your illegal treatment are by law entitled at your hands to pecuniary redress. Not one iota beyond this do we interfere with your 'power of ordination or the internal policy of the Kirk,'—with your Veto Act, or any sentences you may found upon it. Maintain that Act or repeal it as you please,—remain in the Establishment, or go out of it according as conscience may dictate. But it is our duty to tell you, that so long as you remain in the Established Church,—and so long as the law of that Church and the law of the land continue to be what they are—and so long as you continue to act as you do, you will have to lay your account with the payment of damages to every illegally rejected presentee."

Having thus stated to you what the recent decision of the House of Lords amounts to, let us impartially consider its real merits. And here, first of all, let me forewarn you, that in making up our minds upon that question, we have nothing whatever to do with the consequences, direct or more remote, to which that decision may by possibility lead—either as regards individuals or Presbyteries, the Church or the country. If it be true that the "Law has no passion," it is no less true that "Justice is blind." A judge, if he would discharge his office as it ought to be discharged, must shut his eyes to all consequences. The simple and only question for him is, "What saith the law?" or failing law, "What saith equity?" Seldom does a criminal court pronounce a sentence which does not indirectly affect the criminal's innocent connections. In every civil court *one* of the parties necessarily suffers real or fancied damage by the decision. And surely, if there be one class of courts which may be presumed to know more than another that judicial deliverances ought to have no respect to persons or to consequences, seen or unseen, it is the courts of the Church; for on this very principle have they been most rigidly acting during the whole of this controversy. Be the consequences then of the recent decision of the House of Lords what they may—they will prove nothing as to whether the sentence was in itself right or wrong. Should it unfortunately lead not only to much individual hardship and great pecuniary sacrifices, but to a grievous

schism in the church, or even to its entire overthrow, it may nevertheless have been a competent and legal, a constitutional and righteous decision notwithstanding, and in that case the regret of all lovers of our Zion will be,—not that such a decision was given,—but that the conduct of the Church had rendered such a decision necessary.

There are *three* questions it will here be necessary to take up and dispose of: 1st. Was that decision *scriptural* and *presbyterian* in point of principle? 2d. Was it *competent* in point of *jurisdiction?* 3d. Was it *constitutional* in point of *law?* The first question, is, Was it *scriptural* and *presbyterian* in point of principle? It has been roundly asserted,* that it is directly opposed to the Bible and the Confession of Faith, as well as to statute. But this assertion proceeds altogether on a misconception of its real import. It is based on the supposition, that the House of Lords had themselves resolved to take the presentee on trials, or had themselves resolved to ordain and admit him. But how contrary that is to the fact, we have already shown you. They have not meddled at all with the power of ordination; they have not interfered at all with the power of admission; they have not sought to subordinate the ecclesiastical courts to the civil; they have kept strictly within their own civil province. All that they have said, is, "The Act under which you accepted, and by which you still hold your own livings, provides, that you must admit every qualified presentee; you have refused, and you still refuse to take this presentee on trials, to ascertain whether he is qualified or not. In so acting, you have inflicted on him serious civil injury, and we find that you are bound to grant him equivalent civil redress." My friends, I have read my Bible and Confession to very little purpose, if anything can be found in either of them which condemns this decision as opposed either to religion or morality. What says the Bible? "Render to all their dues; tribute to whom tribute is due; custom to whom custom." And who are the sole judges of civil dues but the civil courts? If the law of my country gives any of my fellow-subjects a "civil right," (it matters not what it is, were it even a right of property in human beings, as was once its law, but, thank God! is its law no longer,) and if I am found by a civil court, when adjudicating upon that civil right, to have wronged my fellow-subject, and to be bound to give him legal damages for the wrong done—is *that* contrary to scriptural or presbyterian principle? God forbid! What says the Bible again? (with which the Confession of Faith accords,) "Owe no man any thing;" and if you are found to be lawfully indebted to him, do not resist the debt under the beggarly pretext, that the payment goes against your conscience. That, indeed, is the plea of the Quakers in resisting the payment of tithes; and of some of the Voluntaries in refusing to pay the annuity tax in Edinburgh, and Church-rates in England. In the case of public imposts, some allowance may be made for conscientious scruples, but never before have they been pled—at least by a great Christian body—as a ground of resistance to a private debt, found lawfully due by a competent court—the very court to whose cognizance the Church herself maintained all such questions do exclusively belong. For,

* Dr. M'Farlan's Letters, Letter 6, p. 3.

We inquire, secondly, Was this a *competent* decision in point of jurisdiction? that is to say, was the point upon which they decided one which lay within the lawful province of a civil court? Now, this question may be best answered by another, viz., was the matter in debate a spiritual or a civil matter? Why, it was simply a question of *damages*—a question of pecuniary redress; redress craved on account of wrong, which by a former judgment had been declared to have been illegally inflicted,—a judgment (mark you,) "*in all the civil consequences of which the Church itself had acquiesced.*" If that be not a civil question, which a civil court may competently entertain, I know not what is. But it may be alleged, that though this appears a civil matter when viewed as limited to the bare demand for damages, yet when considered in its origin and tendencies, it is a demand for damages on account of the non-performance of a spiritual act, or a demand made with a view to enforce still the doing of that spiritual act, and that therefore it is *in so far* a spiritual matter, from the consideration of which the civil court is debarred. Well, if that reasoning be correct, just reverse the order of things—try the converse of the proposition. You say, that because a civil matter has, or may have, or may be intended to have spiritual effects, that therefore it becomes spiritual, at least in so far as that it is not competent for the civil court to entertain it. In the same way then, a spiritual matter which has, or may have, or may be intended to have civil effects, becomes in the same way civil, in so far at least as that it is incompetent for the spiritual court to entertain it. And pray then, in what court are such matters to be tried? Are the lieges in both cases to remain without redress? or would you propose to hand over the *essentially civil* cases to the courts spiritual, whenever they happen to involve spiritual consequences; and the *essentially spiritual* cases to the courts civil, whenever they happen to involve civil consequences? That certainly would be a novel method of disposing of cases of mixed jurisdiction, and yet that is the only other method of procedure possible, unless you are prepared to maintain that the ecclesiastical courts are paramount over the civil, and that while the former may and do entertain questions involving civil rights—the latter can entertain no questions involving the exercise of spiritual functions.

When the Presbytery of Auchterarder rejected the presentee, their decision might be called a purely spiritual act; but had it no civil consequences in regard to him? Most assuredly it had—for it had the effect of excluding him from a valuable benefice. Still the Presbytery had no regard to that or any other civil consequences in pronouncing the judgment, nor do we say they ought to have had. But by parity of reasoning, the House of Lords, when called to adjudicate on the question of damages for an ascertained and declared illegal wrong, were equally entitled, on the very same principles, to have no regard whatever to any spiritual consequences which may result from their decision.

It is the less necessary, however, to dwell on this point as an abstract question, because up to the moment when the late decision was given, the Church herself, so far from denying the competency of the civil court to decide on all civil questions connected with the

settlement of ministers, had all along professed and maintained it as one of her own fundamental principles. When the *first* action was raised in the Auchterarder case, did the Church make no appearance in defence? She did. She declined, indeed, the jurisdiction of the court, in so far as things spiritual were concerned, but admitted it to the full in all things civil. The best proof I can give you of this is the express language of her own counsel, not uttered at random in their verbal pleadings, but deliberately recorded by them in the written statement of the Church's case which they submitted to the House of Lords. The document* from which I am about to quote, is signed, "Andrew Rutherfurd, Robert Bell, Alexander Dunlop;" and if the Church is not to be bound by the language of men like these, when acting as her counsel, I know not what can bind her. What then do they say? In adverting to the findings, or as they term them, the opinions of the Court of Session, that "the Presbytery, by rejecting the presentee, had acted illegally, and to his prejudice and hurt," they say, "Now these are opinions which the appellants never denied, that it was competent for the Court of Session to entertain and to act upon *ad civilem effectum*, (*i. e.* in their civil effects,) but which they did deny that they were entitled to act upon, to the effect of undoing what the Presbytery *had done*, or compelling them to do that which they had determined, in obedience to their ecclesiastical superiors, that they ought not to do." Mark here, that neither the Court of Session nor the House of Lords has once pretended to undo what the Presbytery has done, or even sought to compel them to do what for any reason they have determined not to do, unless in the way of pointing out the certain *civil* consequences (because the *legal* consequences,) of their refusal. Again, it is said by Mr. Dunlop, in the paper from which we are quoting, "It was distinctly admitted on all hands, *that the court of session had jurisdiction* to a certain extent. It was admitted, and the appellants maintained, that their jurisdiction would be unquestionable, if the assertion of it were limited *to the redressing of civil wrongs.*" The same principles are reiterated afterwards. "The appellants do not pretend to dispute,—on the contrary, they distinctly admit the power of that court, (the Court of Session,) to judge in *all civil matters* connected with the admission or rejection of ministers and presentees by Church courts. Neither are they disposed to deny their right to inquire into any matter necessary for the determination *of all questions* as to the right to the stipend, or other civil interest which may be thereby affected. And further they admit, that the court has and must have that incidental right of considering even the ecclesiastical procedure of the Church courts, which is necessary for expiscating its own jurisdiction, and enabling it to arrive at the justice of the case *in so far as the civil rights of parties are concerned.*" Once more it is said, "That the appellants do not maintain that the Church courts have any right to interfere with civil jurisdiction, or rather with civil questions in any shape; and accordingly the Presbytery sustained the presentation in this case. They admit that if Presbyteries violate any civil rights, there may be civil consequences arising out of

* Additional Statement for the Presbytery of Auchterarder.

such usurpation. They admit, that in all civil matters the civil powers may decide (as it is called in one of the decisions to be afterwards noticed) *ad hunc effectum, i. e.* TO THE EFFECT OF DETERMINING WHAT THE CIVIL CONSEQUENCES OF ANY ECCLESIASTICAL JUDGMENT OUGHT TO BE." Now, my friends, after these statements of the Church's own principles, which she solemnly made at the bar of the House of Lords, and which she made not so much in the way of concession to her opponents, as in the way of setting forth what she maintained as broadly as they; —it is rather too much for any Churchman to pretend, that the civil court has trespassed on the spiritual prerogative, when it has now disposed of a pure question of civil right.

Again, after the first decision was given against the Church in the House of Lords, what was the language of all her defenders? I appeal to themselves if it was not this; "The Church courts are courts of co-ordinate jurisdiction with the civil courts. They have as good a right to interpret Acts of Parliament in their *spiritual* bearings, as the civil courts in their civil bearings. The Church will still follow out her views of the law within her own province, as to its spiritual consequences, and will leave to the civil courts to follow out *their* views of it, within their province, in its civil effects."

This was not only the language of private individuals,—not only the language of the platform and the press, but of the Church's own leaders, as might be shown by many of the speeches which about that time they delivered. I select but one, and I fix upon it, because the sentiments it contains were uttered by a minister, who carries his notions of Church prerogative as high as any living man, and because the admission he then made meets the very point now in discussion, viz. *the competency of an action of damages.* The Rev. W. Cunningham, of Edinburgh, in a speech he delivered in the Edinburgh Presbytery, in reference to the conduct of the Court of Session, in the case of Marnoch,—a speech, in many of the principles of which I most fully concur,—had occasion to advert to the methods by which a civil court, without going out of its own province, might enforce statutory civil rights, illegally violated by ecclesiastical procedure. After mentioning several of these methods, he says: "Another provision may perhaps be found in an action for damages. That may be the case, for anything I know. It may not be legal or constitutional—I do not think it is—but still it is abstractly competent on general principles. The court may sustain such an action; they may inflict damages; that may be abstractly competent, because *it is not assuming jurisdiction in ecclesiastical matters*, but appeals merely to men's pockets."

And what was the language of the General Assembly itself, which met a few weeks after the first judgment of the House of Lords? Why, to use the terms of their own recorded deliverance, they were "Satisfied that by the said judgment, all questions of *civil right, so far as the Presbytery of Auchterarder is concerned*, were substantially decided, and they renewed the resolution of the former Assembly, ever to give and inculcate implicit obedience to the decisions of the civil courts, in regard to the civil rights and emoluments secured by law to the Church." The Assembly of 1838, it may be observed,

had expressed their unqualified acknowledgment of the exclusive jurisdiction of the civil courts, in regard to the civil rights and emoluments secured by law to the Church and its ministers. Now, were we to stretch the admission here made to all its civil consequences, it would include a much greater pecuniary sacrifice on the part of the Church, than what she has been yet called on to make. Suppose that the supreme civil court had found that the members of a Presbytery who illegally refuse to take a presentee on trials, are not merely liable for damages to be assessed by a jury, but thereby expose themselves to the forfeiture of their own livings. Suppose that, looking at the Act 1592, which is the Magna Charta of our Church, and which ends with the proviso, "that the presbyteries of the Church shall be bound and astricted to receive and admit the qualified presentees of lay-patrons;"—suppose the civil court had held that compliance with this proviso (as revived in the Act of Queen Anne;) is the condition upon which all the privileges and immunities granted to Presbyteries in the former part of the Act are suspended, and that non-compliance with this proviso necessarily occasions their forfeiture of the whole,—the Church might have thought that a hard sentence, but she could scarcely have pretended to believe it either incompetent or unconstitutional,—after she had deliberately recorded her opinion in the Assemblies 1838 and 1839, that "exclusive jurisdiction regarding the civil rights and emoluments secured to her ministers by law, belongs to the civil courts, and that she will always give and inculcate implicit obedience to the decisions of these courts in regard to all the civil rights and emoluments thus secured to her." It might then be argued, that if the Church would by her own acknowledgment be bound to submit, at the bidding of the civil court, to being deprived of the whole, she ought not to complain so much of being called on to give up only a part,—the more especially as the sacrifice is to be made for one of her own probationers, whose civil rights the civil court is no less bound to watch over, than those of the beneficed clergy.

But though the above inference might be drawn without much impropriety from the resolutions of the Assemblies 1838, 1839, it is but fair to state, that when they thought of the application of the general principle they had laid down, the only possible case which occurred to them was,—not the loss of any of their own civil emoluments, but those only of a man who had no existence, because they refused to give him existence, viz. the minister of the vacant parish of Auchterarder;—in other words, the only civil consequence they could conceive of as flowing from the first judgment of the House of Lords, was the loss of the temporalities of the particular parish where the Veto Law might be resisted.

And here, my friends, there opens up to us one of the most extraordinary and unaccountable *hallucinations* (to say the least of it,) of which the history of any law plea, private or public, affords the example. After the House of Lords had given their first decision against the Church, what was the view which the Church's leaders held out to their followers of its meaning and effects? Why they said, (and they got thousands blindly to follow them in the belief,) that

all that the House of Lords had decided was, that whenever the Veto was resisted in a parish, the only consequence would be a separation between the benefice and the cure, and therefore, added they, wherever the Church violates the civil law as now declared, she is willing to suffer the penalty by giving up the temporalities of the particular parish. We find this repeated by them so recently as in the last memorial of the Non-Intrusion committee addressed to the Queen's government, where they say, that "as soon as it was decided that the Church was not, as she had supposed, entitled to give effect to her Non-Intrusion principle in the settlement of presentees, the Church *bowed most respectfully to the judgment.*" One would imagine from this deferential language, that the Church had at least acquiesced in the law she admits was laid down by the civil courts, viz., that she was not entitled to give effect to her Non-Intrusion principle. No such thing;—when they say she bowed most respectfully to the judgment, they mean just the reverse, viz., that she resolved to go on more decidedly than ever in the face of it. The House of Lords said, "You are acting illegally." The Church said, "We shall still continue to do as we have done." The House of Lords said, "You are acting to the hurt and prejudice of others." The Church said, "We do not care for that, we shall do so still," and her leaders call this "bowing most respectfully to the judgment!!!" They will tell us, that all that they mean is, that she made no farther attempt to contest the temporalities of the parish. But not to dwell on the circumstance, that this was in no sense in her power, it is right to keep before you the fact, that the disposal of the temporalities of the vacant parish had not been the point at issue at all; nor did the judgment given against the Church once allude to them. Neither the patron nor the presentee had asked the court to find, that the temporalities belonged to any one of the three parties. The Presbytery had never pled that the temporalities belonged to them, and the judgment did not run, "We find that the temporalities of this parish do not belong to the Presbytery." But the judgment was:—"We find that the Presbytery by refusing to take this man on trial has acted illegally, and to his hurt and prejudice." *That* was the sentence, and the only sentence pronounced; and there was a sad lack of intelligence, or some quality more valuable still, in the Church's leaders perpetually giving out to the people, that all the House of Lords had decided was, that the benefice and cure must be severed wherever the Veto Act is resisted. It is true indeed, that that was a consequence which followed from the judgment, but it was not the judgment itself, nor was it the only nor (as events now show,) the most important consequence to which it would necessarily lead.

But to return. It is undeniable, as we have said, that after the first decision of the House of Lords, the language of all the Church's advocates was, "The Church will follow out the spiritual consequences, let the civil courts follow out the civil effects." Well, the rejected presentee, acting upon this suggestion, made a second application to the Presbytery to be taken on trials, and met with the same refusal. They told him indeed, "We give you up the temporalities" —forgetting however that these were neither theirs to give, nor his to take. The vacant stipend has since then been awarded to the

patron; but it must be applied for pious uses within the parish, and not one farthing of it can he legally give to the presentee. The latter, therefore, finding that the ecclesiastical court followed up the spiritual consequences of the judgment of the House of Lords by doing nothing, then tried the other alternative, and applied to the civil court, asking them to follow up the civil consequences. This, accordingly, they proceeded to do by awarding him damages for his civil loss. But, say the Church's leaders, "That is not a civil consequence which we intended or contemplated. As long as it was confined to a severance of the cure from the benefice, we offered no resistance. We admitted that it was competent for the civil court to do that;—but this of damages is a new feature—this is a civil consequence, which it is altogether incompetent for that court to entertain." Now, my friends, put that objection into plain language, and what is it but saying, "We will allow the civil court to judge of all the civil effects which *we* think should follow, but of no others. It is for us to *select* the civil consequences as well as follow out the spiritual; and we decide that the presentee's civil interest has not been in the least injured." And what is that but a new and till now unheard-of claim put forth on behalf of the Church—not only to judge of things spiritual but of things temporal also,—an attempt as foolish as it will prove futile, to limit the jurisdiction of the civil court to those civil questions arising out of ecclesiastical procedure, which the Church, forsooth, may think it fit and expedient for the other court to handle. This would be a fresh grasp at usurpation—more daring and monstrous still than the presumptuous claim to be an authoritative interpreter of the British Constitution; and it would be an attempt made in the face of the Church's own solemn disclaimer of any such power in things civil, which she gave by her counsel in presence of the supreme tribunal of the country.

But the competency and the constitutional legality of the late decision are so mixed up together, that it is not easy to separate them in the discussion. We must therefore somewhat anticipate the latter point, when we remark that the only shadow of argument against the award of damages being either incompetent or unconstitutional is that it is designed to control, and will have the effect, or, at least, will have the appearance of controlling the Presbyteries of the Church in the free discharge of their spiritual functions. That this was the *design* of the civil court there is no evidence whatever, but I candidly admit that such will be the *tendency* of its judgment. Now, I presume no one will go the length of saying, that (whatever may have been the exaggerated pretensions recently put forth in her name) the Church herself has ever maintained that she is authorized by law to do in the settlement of a vacant parish whatever she pleases. We have seen that her own counsel, Messrs. Rutherfurd, Bell, and Dunlop, admitted at the bar of the House of Lords, "that if Presbyteries violate civil rights, (such as by refusing to sustain a legal presentation,) there may be civil consequences arising out of such *usurpation*." That is their word, and not mine. But what remedy can there be for such usurpation, but a something—be it what it may—the tendency of which will practically be to keep the Presbytery within the strict line of their legal statutory duty. The

whole case here lies within a nut-shell. A Presbytery are by Act of Parliament bound and obliged to do something in the settlement of parishes, or they are not. If they are *not* bound and obliged to do any thing—then, to be sure, they have the settlement of parishes completely in their own hands, and the Church and people of Scotland have been living for a century and a half under the strange delusion that there was such a thing as Patronage. But if the Presbytery are bound and obliged *to do any thing*—it matters not what—then there must be some means of endeavouring to make the obligation effectual, in the event of their not fulfilling it of their own accord. For example, the supposition has been made,* and it is allowed to be one which might sometimes be realized, "that Presbyteries, from a dislike of the law of Patronage, or from caprice, or from a desire to have the nomination of the minister, or from some other cause, might refuse to admit the patron's presentee though qualified;" but it is added that in order to meet that case, "The Scottish Parliament"—I beg you to mark the words—"imposed the only *check* on Presbyteries which it could, without impiety and the infringement of the spiritual jurisdiction, impose—it made it lawful for the patron, with the aid of the civil courts, to retain the stipend and other fruits of the benefice in his own hands. *A better and more effectual check* could not have been devised." Ponder well, my friends, on this word *check*. What is a check? The dictionary tells us it is a "restraint, a curb." Then there *is* a restraint on the Presbytery's independence. Then there *is* a curb or control on the Presbytery's jurisdiction. Then there is a something, the expected effect of which is to keep the Presbytery within its constitutional province, and the express design and tendency of which is to bind, and astrict and oblige the Presbytery to its statutory duty. Where is unlimited independence?—where is uncontrolled jurisdiction now? How can that Established Church pretend to either the one thing or the other if she is told: "Go one step beyond law in the settlement of that parish,—and your Establishment there is at an end." Now, I beg to ask where is the great difference as to the point before us, between *one check*—the loss of the benefice,—and *the other check*—the payment of damages? They differ indeed in degree, but in so far as they both act as *checks*, they are the same in kind. In the management of a refractory animal, a single bridle is not less really a restraint than a curb rein—it is only less powerful.

But, indeed, it may here be fairly questioned which of the two checks now mentioned ought to be felt as the more powerful—the loss of the temporalities to the parish, or the payment of damages by the Church. To which of these two things (viewing them both as restraints) might a Christian church—taking an enlarged and philanthropic view of the matter, be expected to attach the greater weight? In the one her office-bearers indeed suffer personal pecuniary loss, but in the other case she sees parish after parish left without any certain provision for the sustentation of a regular ministry—the inhabitants gradually losing their church-going habits—not joining the ranks of Dissent, (that would be a blessing, but from

* Dr. M'Farlan's Letters, Letter 7, p. 3.

that the Church dissuades them,) but relapsing into ignorance and irreligion, infidelity and vice. Now, were human nature more perfect than it is, it might be expected that the latter would be a much more formidable prospect to the Church than the former; and yet as ministers and elders are but men, it does so happen that the case is otherwise. There is a FELT difference between hearing from a civil court, "If you do not take this presentee on trials, the parish will be left without any provision for the dispensation of public ordinances"—and hearing from them, "If you do not take this presentee on trials, you will have to pay him damages." The reply to the former intimation is, "Well, that is a wise and good arrangement, a proper and effectual check on my usurpation which I admit to be civilly illegal.' But talk to him of having to pay damages—appeal, as Mr. Cunningham says, to his pocket—and he is then in horror, not, of course, at the loss he may sustain—but at the infringement of his jurisdiction, and the impiety of the demand.

But it is said that this check upon presbyteries, arising out of the award of damages, is the less necessary, because the other, viz. the forfeiture of the benefice, is the best and most effectual check that could have been devised. Is it indeed? Then has it proved so?—that is the question. Effectual?—effectual for what? It must be for keeping the Church from doing either what she thinks wrong herself, or what the civil law may declare to be wrong. Does a Christian church really require a check of the former description?—does she need to be restrained (*from without, too*) from doing what she herself knows to be wrong? I have a better opinion of the Church of Scotland than to believe any such thing. Then the check must be intended to keep her from doing what she herself may think legal, but what the law pronounces to be illegal. The question then recurs, Is the forfeiture of the benefice an effectual check for *that?* Has it proved effectual for keeping the Church from persisting in doing what has been pronounced to be civilly illegal, and from inflicting what is declared to be civil wrong?—for if it has not had that result, it has failed as a check altogether. Has it then had that effect? Has it restrained the Church from persisting in her Veto Act, which again and again has been declared by the competent court to be civilly illegal? You know, my friends, that it has had no more influence in binding and astricting Presbyteries to their declared statutory duty than if it had no existence. The Veto Law stands unrescinded; nor is there the slightest movement on the part of the Church's leaders towards its repeal. And it is to my mind as clear as noon, that if this additional check had not come in their way, any remaining civil and patrimonal rights of patrons and presentees would have been trampled in the dust. The leaders of the movement would then have said, "Well, we now know the worst. Let us act in the settlement of parishes as we please; the only consequence is the severance of the benefice from the cure, and as that is a result which already flows from our keeping up the Veto, let us now go gradually far beyond that law. Let us first insist on a positive call, to be signed by a majority of the parish; then let us refuse to sustain all presentations, and then let us moderate in a call at large, or keep the appointment in our own

hands, as we shall deem most expedient. Have we not unlimited spiritual independence? Have we not uncontrollable spiritual jurisdiction? We cannot indeed, as yet, dispose of the benefice, but we can dispose of the cure to any person we please, without any fear of consequences, and by driving in the wedge in this manner, we shall force patrons and the government into any plan for the settlement of parishes that we may devise." Now let the people of Scotland mark this!—if a *popular* General Assembly could give them the right of choosing their own pastors, an *anti-popular* General Assembly could on the very same principle take it from them. Instead, therefore, of their accepting from the Church shadowy and baseless rights, ever liable to be resumed—rights the exercise of which, when opposed, deprives them of the benefits of an Establishment altogether, let them learn that their safety lies in obtaining from Parliament some certain *civil* standing in the matter, and then they too will possess civil rights in the settlement of their ministers, of which the Church could no more deprive them illegally, and without civil redress, than she can now deprive patrons and presentees of theirs.

The third point still remains, viz. is the decision *constitutional* in point of *law?* But it is the less necessary to dwell upon it at length, partly because we have been led to anticipate much that bears upon it; and partly because, if the question that was raised was one which it was competent for the civil court to take up and dispose of, then their decision, be it right or wrong, must be held, unless altered by the legislature, *to be the law of the case.* And if it be the law, it is agreeable to the declared *legal* constitution of the country, since, in a matter like this, law and constitution are practically the same thing. For where is the constitution to be found but in the law? and who are the interpreters of the law (at all events on questions like this of civil rights,) but the civil tribunals, the Church herself being witness. In the meantime, this *is* law,—whether it be relished or not; it is law, which is binding on the lieges, ecclesiastical persons though they be, for their own Confession tells them they are not exempt from the civil magistrate's lawful authority; and in awarding civil damage for declared civil loss,—the civil magistrate is acting in accordance both with law and justice. We hear some muttered threats of not yielding obedience. If all that this means is, that they will not alter the Church's law in consequence of the decision, the threat may be allowed to pass, for the judgment leaves them at liberty to do in that as they think fit. But if it means, that they will refuse to pay a money debt found legally due,—yes, and continue to put themselves in the way of contracting similar debts, which for the same reason they will refuse to discharge—fortunately the law of debtor and creditor is in this country strong enough to vindicate its authority against all persons, plebeian or noble, lay or clerical, who may attempt to set it at defiance.

But as the decision (be it right or wrong,) is binding, unless the legislature interpose, so being the decision of a competent court whose members are sworn to administer justice faithfully, the presumption is, that it *is* a right decision both in point of law and equity. That presumption is strengthened by the consideration, that it was a *unanimous* decision, both in the House of Lords and in the

only division of the Court of Session where the question was discussed.

It has lately been asserted,* that "the most eminent lawyers on the Scottish bench are of a decidedly opposite opinion," from that which has been expressed by the four law lords, (viz. Lords Lyndhurst, Brougham, Cottenham, and Campbell,) who gave judgment in the House of Peers. Now, if authorities are to weigh in this matter, how stands the fact? It is true, that in the *first* decision in the Auchterarder case, there were five of the Scottish judges out of the thirteen in favour of the Church. But with regard to this *second* question of damages, four of these have had no opportunity of expressing any opinion at all, and the *fifth*, the only one who has, gave a judicial deliverance as decidedly adverse to the pretensions of the Church as any one of his brethren. The judge to whom I refer, is one whose integrity and impartiality are above suspicion, and whose leanings (if he had any) were in the Church's favour—I mean *Lord Fullarton*. In delivering his judgment, he said, that "though he had adopted the argument in favour of the Church in the former action, he was now bound to hold the judgment of the House of Lords as fixing the law of the case, viz., that the Presbytery are under a *civil obligation* to perform the Act there concluded for, and that therefore he could entertain no doubt as to the competency and relevancy of the summons; and *repelling every one of the defences*, he agreed with his brethren in thinking that there were here all the necessary elements of an action of damages."† It thus turns out, that among all the judges before whom the case has been argued, not one has had the least hesitation in giving judgment against the Church; not even of those who in the former action had been in her favour. Now really, with this strong fact before us, it is unnecessary for me, even were it becoming, to attempt to enter on any part of the strictly legal argument. It has been said, as is always said by the losing party, that these learned persons paid no attention in their judgment to certain Acts of Parliament, upon which the Church rests her claims of right. This is an insinuation, that they decided the case in a spirit of ignorance or inattention, which in a judge is a spirit of injustice; and if this be the meaning of the assertion, I take leave to say it is a gratuitous calumny. Every one of these Acts had been pled in the former action, of which this was but the natural sequel, and they had been duly considered and disposed of by both courts; and if any one, whether lawyer or not, will read these Acts with an unbiassed mind, he will cease to wonder that the judges took no notice of them in their speeches, for not one of them comes within a thousand miles of the only point that was now raised. These same Acts, by the way, are made to do duty for every kind of conceivable claim the leaders of the Church take into their head to prefer in her name. They were first alleged in proof of her spiritual jurisdiction, which, when properly defined, no one has denied. Then they were quoted to prove, that to her alone belongs the examination and admission of ministers, and neither has that been called in question; on the contrary, the complaint is, that she will not *examine* at all. Then they were brought forward

* Dr. M'Farlan's Letters, Letter 7, p. 4.
† Dunlop's Reports for 1841.

to show, that she is an authoritative interpreter of statute-law, a pretension which is somewhat more doubtful; and now these same Acts are appealed to with the view of establishing, that however illegally and wrongfully she may be declared to have acted to a private party —she owes him no redress.

The only plausible argument drawn from statute is that formerly adverted to, viz., the disposal of the vacant stipend. On that point, just hear the Church's own friend, Lord Fullarton: "We cannot listen to the argument here, that the only remedy provided by the statutes in a case of this kind, is the retention or appropriation of the vacant stipend by the patron. That was pleaded, and by the clearest of all implications, repelled in the former action. If it had not, the action could not have been sustained at the instance of the presentee at all; and secondly, it could not have been sustained at the instance even of the patron against the Presbytery, who did not claim, and could not possibly have any interest in the vacant stipend."

The references to former *judicial decisions* are just as much out of place as those to Acts of Parliament. The point certainly never was before decided by the highest civil tribunal, and it therefore was not bound by any former judgment of the courts below, even though such had been given. But in truth the question never had been, in any shape whatever, before any civil court in this country on any former occasion. Never did a presentee who had been declared to be illegally rejected, apply for damages before; because never before had any presentee been treated by the Church courts in the same way. There had, indeed, been cases of competing presentations from different Patrons, in which Presbyteries were found by the civil court to have settled the wrong man. The presentee whom they rejected by mistake might have tried his action for damages; but we happen to know in the case of almost all of them to whom this happened, that there was a good reason why they did not seek such redress, namely, because they were otherwise provided for.* But even though they and their Patrons had gone to the court in quest of damages, it is very doubtful whether they would have obtained them; for this simple but most satisfactory cause, that in all the cases of this kind that ever occurred, the Presbytery, though they committed a mistake, were acting *in good faith;* the illegality of their rejection of the legal presentee was not wilful; indeed the act of settling the wrong man was consummated before they knew it to be illegal at all. But the same good faith cannot be pleaded here. The Church cannot pretend to say, "We have unwittingly settled the wrong man," for she has settled nobody. She cannot declare "We think this is not the legal presentee," for she sustained his presentation, and there is no other candidate for induction but himself. She cannot allege, "We did not know we were acting contrary to the civil law of the country," for she does know it, she glories in it.

I have thus shown that the recent decision of the House of Lords is *first*, in point of principle, not opposed either to Scripture or the

* Thus we find Mr. M. Moncrieff, the legal presentee to Auchtermuchty, soon after minister of Bressay; Mr. Trotter, the Culross presentee, got a call to Bo'ness; and Mr. Gray, presented to Lanark, was already minister of Rothes.

Confession of Faith; *secondly*, in point of jurisdiction, is competent; and *thirdly*, in point of law, is constitutional. But it may be asked now, May not the Church at least represent the case to the legislature? Most undoubtedly she may; but let her leaders weigh well the demands they make in her name. If they go saying, "You see the embarrassments into which we have brought ourselves, and we ask you to extricate us out of them, by conforming the law of the State to ours." That is a representation which is perfectly proper to be made, and that may be listened to. But if they go saying, "It has been determined, that because we are found to have acted illegally, we are liable in damages to the party aggrieved, and we ask you to alter the law in that respect. Let a bill be introduced, providing, that whatever may be the law of the country as to the settlement of parishes, it shall not be competent for the civil court to find that the Church can ever go wrong in the matter—can ever act illegally, do what she will; that it shall be held to be impossible for her ever to be supposed to violate the statute. Or let it be provided at least, that even though it may be found that she has acted illegally, in violation of statute-law, and to the hurt and prejudice of private parties, she shall in no case be held responsible for any damage or loss she may have caused them by her illegal and unjust procedure." In other words, let it be established by statute, that the only persons in the empire who shall be freed from all legal personal accountability for civil wrong wilfully inflicted, shall be "the clergy of the Scottish Church."

My friends, I should like to see the British statesman who should DARE to propose such a measure to a British House of Commons. Sure I am, there is enough of sound Protestant feeling in the country to hurl him from his seat. For disguise it as you will, the principle embodied in the above supposed claim is POPERY; rank, unmingled, unmitigated popery; it is popery of the darkest age; it is popery of the most dangerous character; it is the popery of Boniface and Hildebrand; it is popery of a description which would make one blush to belong to a Church where such monstrous pretensions were advanced. They have *not just* been advanced as yet; but after what we have seen of late years, we need be surprised at nothing. The claim to unlimited spiritual independence, even in matters involving statutory civil rights, soon paves the way for a demand of exemption from all civil control in *any* matter the Church may pronounce to be within her own jurisdiction. Now, my friends, let others do what they will, my mind is made up—my ground is taken. Much as I desire the perpetuity of that National Establishment which has been the means of conferring such advantages on our beloved Scotland, yet sooner than see its clergy invested with powers like these, powers so contrary to the spirit of the British constitution, I would far rather see it laid in ruins to-morrow; and come what may, if I must make my choice between the two alternatives—then my motto and my watchword be this, "PERISH THE ESTABLISHMENT! LIVE THE CONSTITUTION!"

I am, My Dear Friends, Your affectionate Pastor,

N. MORREN.

*Greenock, Nov.* 12, 1842.

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[THIRD THOUSAND.] [No. IV.

# MY CHURCH POLITICS:

IN

# LETTERS TO MY PEOPLE.

BY THE REV. N. MORREN.

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## LIMITATION OF INDEPENDENCE.—THE LATE CONVOCATION.

My Dear Friends,

In resuming the consideration of the present position of the Church of Scotland, in its relations to the State, I have first of all to offer an explanation of the delay that has occurred in my again addressing you. The cause was simply thus. There was summoned to meet at Edinburgh, a Convocation of those ministers who were presumed to form the majority of the Church, with a view to deliberate on the course to be pursued in consequence of the decision of the House of Lords, in the case of Auchterarder. Actuated by the same love of peace, or, as some may think, of ease, which so long kept me from taking any part in this controversy, I felt it to be my duty to wait for the result of that meeting, in order to ascertain, from the resolutions which might emanate from it, whether or not there was yet any prospect of an amicable adjustment of our unhappy differences. *You* know full well, my friends, that it was with very great reluctance that I entered into this contest at all, and not indeed until I was driven into it from pure necessity, in self-defence. And I do solemnly assure you, that so unwilling am I to protract it without cause, that could I yet see any hope, however faint, of a termination to our difficulties, I would gladly abstain from all farther debate, satisfied with having proclaimed to you and to the world the general principles which I have been led to embrace. Deeply therefore do I regret to find, from the proceedings of the recent *Convocation*, that while there is as little inclination as ever towards any friendly concessions to their opponents, claims are *now* put forth in the name of

the Church, which are utterly incompatible with a state alliance in any free Protestant country,—unless the State shall choose to give up the settlement of parishes entirely and absolutely into the Church's own hands,—a surrender which is as unlikely as (in the Church's present temper) it is undesirable. To one of the many fallacies upon which these extravagant pretensions are based, I shall have to call your attention before the close of this letter; but in the mean time I proceed to the discussion of the topic which is the next in order, viz. *the voluntary limitation of spiritual independence.*

In former Letters, I laid down and illustrated this first and fundamental proposition, viz., that the Lord Jesus Christ is the sole King and Head of his Church, and that He has vested the government of it in office-bearers, who are distinct from the civil magistrate, and who are bound to administer its affairs according to the principles and rules of Christ's word. The distinction between the power of the *spiritual* and the power of the *civil* magistrate, I attempted to elucidate by examples drawn from the present controversy.

Proceed we now to a consideration of the second proposition I announced, which is this, viz., "*That the office-bearers of the Church though possessing inherent independence, may nevertheless, in things non-essential, lawfully consent to a limitation of that independence, provided they conscientiously believe that their so doing will more effectually promote and secure the great ends of the Christian institution.*"

To some persons this proposition appears so obvious as to be almost self-evident; to others it seems so monstrously absurd, that they will scarcely listen to any demonstration of its truth. It shall be my endeavour to open up and establish it to the satisfaction of every candid inquirer.

What is independence? Independence is perfect freedom from all restraint; entire exemption from all control; it is the being at liberty to do in all things and in every respect *what* we please, and *as* we please. In this absolute sense, there is one and only one, in the universe who is independent. And He, the Creator, has made all his creatures, rational and irrational, dependent upon himself. Yea, with regard to his rational offspring, both in this world and the next, he has so formed them that they are in part dependent for their happiness, not only immediately on himself, but mediately and instrumentally on each other.

Take the case of man in this world. It is no doubt true that he is a free agent, because if not free, he could not be held responsible. He does naturally possess inherent independence for the exercise and employment of which (so long as he violates no human law) he is accountable to God only. In a free country like this, every one, as soon as he arrives at an age when he is removed from parental control and becomes his own master, is at liberty to do with himself as he thinks fit,—provided only he yields obedience to the laws of the State which protects him, and does no injury to his neighbour, of which these laws take cognizance. He may, if he please, retire from human society altogether, and haunt with the wild beasts of the earth, were it only possible for him to sub-

sist on the scanty and precarious nourishment which its spontaneous produce would afford. Propose to a man, who seems thus bent on exchanging the refinements of civilized life for the isolation and barbarism of the savage—propose to that hungry, naked, houseless, homeless wretch to resume his connection with society and herd again with his fellows, and earn an honest livelihood by making himself useful to them, as they in their turn would be to him. "What!" says he, "give up the inherent independence I have received from my Maker,—that is a monstrous and most dangerous doctrine.* No; as I cannot join human society without a sacrifice of that freedom which is the gift of God, I am resolved to remain for ever estranged from it." The poor man confounds in his mind the entire surrender of his liberty (which would reduce him to the condition of a prisoner or a slave) with that voluntary limitation of his individual independence without which it is quite true human society could not exist. In whatever way what is called "the social contract" may have originated, or in whatever way it may be interpreted,—one thing is certain, that whenever men consent to live in one community, and to submit to the restraints of law and government, the arrangement implies that they feel it to be for their mutual interest and benefit to limit to a certain extent their personal independence, or (as it is sometimes expressed) they agree to sacrifice a portion of their individual freedom, the better to secure the rest. How could there be union, or order, or peace, if every one, in the unlimited exercise of his own inherent independence, were determined to have his own will and way in every thing, and to be a law unto himself, as well as perhaps to others also?

Nor is it only to the *political* arrangements of society that this principle applies, but more or less to all the transactions between man and man. What is the history of human life, in so far as it embraces man's dealings with his fellows, either in the affairs of business or the pleasures of social intercourse, but a history of the continued limitation, voluntary or involuntary, of each one's inherent independence? The poor man is free to dispose of his labour,—the rich man of his money, as he pleases; but let either of them once give his consent as a party to a bargain,—let him only bind himself

* These were the words of the *Rev. James Stark*, of Cartsdyke, when animadverting, in the Presbytery of Greenock, on the proposition now under our review, after it was announced in my First Letter, but before I had had the opportunity of explaining its meaning. That gentleman was, till lately, a member of the Old Light Burgher Synod; the "Testimony" emitted by whom seems now so rare, that I have been unable to procure a copy. It will not be denied, however, that one of their favourite fundamental principles was the right, (the *divine* right?) of the people to choose their own pastors. Now, when Mr. S. resolved to join the Establishment, did he really expect that he would be at liberty to give effect to that principle *ministerially* in the settlement of patronate livings? Certainly not. He joined the Church in the full knowledge that it practically admitted the legal initiative to be in the patrons and not in the people,—an admission which is still made, even by those presbyteries who are following the cowardly and childish course of not sustaining a presentation, and yet moderating in a call to the presentee alone. Did Mr. S. then renounce his own opinion as to where the initiative ought to be? Far from it; he glories still in being an out and out anti-patronage man. Then, in the name of common sense, upon

either expressly or by implication to some agreement on any given point, and what is that but virtually depriving himself of his freedom to act in the matter differently from that to which he has bound himself?—What is it but virtually ceasing in so far to be free, because voluntarily limiting his inherent independence, as to the disposal of all the questions which the contract may embrace? Perhaps you will say, that in these cases, it is in the exercise of your independence that you consent to its being limited. Why, that is just the very thing which I am now wishing to prove to you, viz. that such a consent to allow your freedom to be restricted, is so far from showing that you do not possess it inherently,—that it proves the very contrary,—it affords the best evidence that you *do;*—for the spontaneous limitation of it is just as much your own independent act, as would be the most absolute and unrestrained exercise of your freedom. You may see therefore that it is not only lawful for man to limit his natural independence, but, if he would best promote the great ends for which he has been placed in society, it is absolutely necessary; because without such mutual limitation, society could not exist, nor could the business of life be effectually conducted.

And if you look into the more permanent unions which two or more individuals form together, for their reciprocal advantage, you will find that their harmonious and effective co-operation in the promotion of the common end, necessarily involves more or less the frequent sacrifice of individual independence both of thought and action; and what is a not uncommon cause of such partnerships being dissolved, is simply the stubborn determination of one of the parties to have every thing his own way,—in other words, his refusing to allow his individual independence to be in any respect controlled. Nay, in those cases of union where there is a real or implied subordination in one of the parties to the other, (as in the case of husband and wife, or of a senior and junior partner),—unless the superior is resolved to act the part of a very tyrant, even he must occasionally consent to yield up his own opinion, and renounce his own will if he would have the great end of the union,—I mean the mutual bene-

what principle is he now acting, but on the "monstrous and dangerous doctrine" that he may lawfully consent to a limitation of his spiritual independence? But Mr. Stark felt it his duty to have another "hit" at an absent member, by complaining, that my friend, Dr. Barr, and I, are very ready to point out what has been *wrong* in the policy of others, but that we have no distinct plan of our own. I hope this remark was dictated by the conviction, (which is spreading wide throughout the Church, and is all but universal throughout the country,) that he and his party have been going sadly and fearfully *wrong* under their present guides. The first step to truth is a consciousness of error, and I rejoice to find that Mr. S. is on the lookout for new leaders to set him right. As he appears to be a diligent student of these Letters of mine, let him only have the patience to finish them with a calm, imperturbable, and unprejudiced mind, and without indulging in premature criticism, and he will perhaps discover some "inklings" of a plan for the removal of a part of our difficulties. But if he insists on my immediate advice for his own guidance, it is this, viz. that unless he can give up in theory, what he has the good sense to abandon in practice,—the *monomania* of unlimited and illimitable independence, then the sooner he goes back to the Old Lights the better; for any Light, however old or glimmering, is preferable to the Cimmerian darkness of his present state of "stumbling conformity."

fit of both the parties,—really promoted. Now, it is the part of true wisdom to discriminate and decide when absolute freedom of action should be claimed, and when suspended,—when inherent independence ought to be fully asserted and enforced, and when it ought to be voluntarily limited, as the means of securing, though in a perfectly lawful manner, more important and beneficial results, than could be secured by its most unlimited and uncontrolled exercise.

But it may be said, that while this must be admitted to hold good with regard to the natural inherent independence of men as members of society, it cannot be allowed to apply to the inherent independence possessed by the office-bearers of the Church of Christ. Then if our reasoning may not apply to them, it would follow that *in no case* can they consent to allow their independence to be limited in the smallest iota, even though the result should be a much more effectual promotion of the grand and ultimate ends of their appointment, than could be accomplished by any other method. Then it would follow, that a Church cannot without sin accept of a state establishment, unless it be left as free to do in *every thing* as it thinks fit, as is a body of Dissenters, who owe to the State nothing but protection. Then it would follow, that while in all other unions or partnerships known upon earth, there is a necessary yet voluntary limitation of the individual independence of the contracting parties,—in the case of a union between Church and State, the limitation must be all on one side; that though the State may bind itself to establish and endow a particular Church in preference to all other Churches, yet that Church cannot, dare not, bind itself to the State in any one thing, for if it bind itself in any one thing, it in so far sacrifices that inherent independence, which on no account is it at liberty to sacrifice for any given object whatsoever. Well, if these things are so, it is very natural to inquire why they are so? What is there in the inherent independence of the Church's office-bearers, so essentially different from the inherent independence every man has received from his Maker, that while the latter may be lawfully but voluntarily limited, the former cannot be limited without sin?

Do the two things differ as to the source whence they flow? They do not. Both are derived from Him who is at once the Creator of human beings, and the Head of the Church. Do they differ as to the great end which they are both designed to subserve? They do not. Man's chief end is to glorify God; and if his Maker bestows upon him inherent independence, there can be no question that he is bound (as accountable to God for the use of it,) to employ it for God's glory. And what is the grand design of the establishment of a Church on the earth, but likewise to advance the divine glory, though in a different and still more illustrious manner? If men, in their individual capacity, may better promote the end of their existence by consenting to a limitation of their independence in certain things—why may not the Church's office-bearers also?

It may be alleged, that the Church is a distinct kingdom of itself, as essentially independent in all respects as is any one of this world's kingdoms. Be it so, but how does that affect the point before us?

Do not the kingdoms of this world enter into engagements with each other every day,—in which, without sacrificing their independent existence, they do, of their own free accord, make mutual concessions, even of inherent rights, for the mutual advantage of their respective subjects? I allude particularly to treaties of commerce and navigation, based on what is termed the principle of reciprocity. That principle does not necessarily imply that the return shall be the same in kind, but simply, that in lieu of certain advantages granted by the one party, some equivalent benefit shall be conceded by the other. But let the treaty once be signed and ratified, and these two independent states have, by their own independent act, ceased to be independent on all the points which are now the subject of express and solemn stipulation between them. It is true indeed, that a nation may sometimes be found which has no regard whatever to the faith of treaties; and which, though it has come under the most sacred engagements to another state, nevertheless asserts its independence in the matters embraced by the treaty to be as unlimited as if no such agreement had ever been made, Such is the conduct which France is at present threatening to pursue with respect to her treaties with Britain for the suppression of the slave trade; but should her government adopt the course supposed, it would be regarded by the whole civilized world as a most flagrant violation of international law, and would brand with the stamp of deep dishonour the nation by whom it would be perpetrated.

To dwell longer on this point, however, seems unnecessary. Why seek to prove that the possessor of inherent independence may lawfully consent to its limitation, when we know that (be it said with all reverence,) even essential, underived, self-existent independency has been pleased, for wise and gracious ends, to bind itself? It is doubtless true, that it is in condescension to human weakness, that the Deity speaks of himself and his determinations in the language to which we now refer. Still it is language which his own word has taught us to employ in setting forth his wonderful works to the sons of men; and how often does it represent him as entering into covenant, as binding himself by promise, yea, as confirming his promise by the sanction of an oath? And can it be doubted, that what unerring wisdom saw fit to stipulate, immutable truth will most assuredly perform? But what is a covenant, a promise, an oath, but the voluntary limitation of inherent independence?

Now it is the same God who has placed *his* Church in the midst of *his* world; and we have seen that in consequence of his appointment, human society, both in the case of families and of larger communities is made to cohere together and prosper, by reason of the mutually spontaneous limitations of that natural freedom which every individual of the number has received from God. And if, therefore, the office-bearers of his Church find it advisable to form an union with a Christian state, for the purpose of more "effectually promoting and securing the great ends of the Christian institution," nothing is more likely (reasoning beforehand,) than that in such an union, as in all others known among men, there will be, on the side

of both parties, some voluntary restriction of that inherent independence to which, in their own province, they both lay claim.

Let it be borne in mind, on the one hand, that by the terms of any such alliance between Church and State, as has now been supposed, *the State necessarily sacrifices a portion of its independence.* It binds itself to endow and establish and nationally recognise only one particular Church, conferring upon it many peculiar prerogatives and emoluments, to the exclusion of all other Churches in the country. In this respect at least, the Church of Scotland has no reason to complain, for the countenance shown to her by the State is more exclusive than that shown to any other Church Establishment in the British empire. In France, and in other countries of continental Europe, while there is one Church acknowledged as the National Church, the ministers of all other denominations, (including even Jewish Rabbis,) are supported out of the public purse. Grants of money, under the name of *Regium Donum*, &c., are made to Dissenters both in England and Ireland, but none whatever in Scotland; and with the exception of certain drawbacks given of late years on the materials for building of Dissenting Chapels, I am not aware of the State having ever shown the least countenance to any other Christian body in Scotland save the Established Church.

Now as the State has thus bound itself to the exclusive establishment of the Church,—is the Church to bind itself in nothing to the State? You may no doubt picture to yourselves even a Protestant Established Church, left in all things absolutely and sovereignly free; incorporated with the State, yet at liberty to do within the State whatever it pleases, (for nothing short of that is *unlimited* independence;)—but however beautiful and perfect such an arrangement may look in theory, be assured, my friends, that the more closely you examine either its speculative tendencies or its practical workings, if ever brought into actual operation, and the more minutely you follow it out by anticipation in all its probable ramifications, and in all its certain results,—the more clearly you will discover that in the present imperfect state of our being, it is a mere creature of the fancy which it is impossible to realize,—or if an ephemeral existence were allowed it in a country like this, it would exist only to be put down by the indignant voice of a free people. The idea of a Church established by civil authority, yet altogether independent of the civil power,—whether executive, judicial, or legislative,—claiming to define exclusively and peremptorily, without arbitration and without appeal, its own constitutional prerogatives, and yet never mistaking them, never exceeding them, never abusing them, or at least always checking its own errors and excesses, instinctively and infallibly from *within*, (for any check from without is incompatible with unlimited independence,)—a State Church uniformly keeping, of its own accord, within its own self-determined province, and its own self-interpreted powers, and never trespassing on civil jurisdiction, and never encroaching on civil rights,—such an idea is in reality little better than one of the most baseless visions of Utopia, or one of the wildest dreams of the Millennium. Accordingly we find that in every Protestant country where a Church has been established by

law, there has been a limitation express or implied, compulsory or voluntary, of that independence to which, if unconnected with the State, that Church might otherwise have laid claim.

Now these things being so, the question arises:—In what cases may the Church lawfully consent to a limitation of her independence? for our proposition takes it for granted, that there are cases in which she cannot do so without sin. There may be some of you who are disposed to admit, that the Church's office-bearers may lawfully consent to limit their independence in things *non-essential*, but that before you can fully assent to the proposition as laid down, I must first define to your satisfaction what I mean by that term. Now in reply to this demand, instead of launching out into vague generalities as to the difference between essentials and non-essentials in Church government,—I think it will be better to give you at once a case in point, as illustrative of my meaning.

A certain State and a certain Church open a negotiation, with a view to an alliance for their mutual benefit. The State says to the Church, "We are willing to endow you as the Establishment,—provided you concede to us the power of prescribing to all candidates for license the course of their studies,—of fixing the amount of their literary, moral, and religious qualifications,—and of granting them authority to preach the gospel." To this the Church replies, that the terms cannot for a moment be listened to, because the right to commit the gospel to faithful men, upon whom she sets the seal of her approbation, is so *essential* to her existence and character as a Church of Christ, that she cannot denude herself of it without sin.

The State then makes a second proposal, and says, "Be it so, that you and you only, shall be entitled to say who are and who are not qualified to receive licence from yourselves to preach, and be capable of receiving a nomination to a vacant benefice. But we ask you not to interfere with the right of nomination. You may think that it ought to be in the hands of the people, but we have reasons of State (arising out of the peculiar constitution of the country,) for opposing a method which would infuse too large a democratic element into a body to be incorporated with the State, and thereby, not only unduly diminish the proper and necessary influence of the aristocracy and the crown, but ultimately endanger the existence of the monarchy. Moreover, we have no wish to disturb or interfere with vested civil rights that have existed for centuries; and we must therefore make it a condition of establishing your Church, that the *initiative* of the appointment of ministers shall remain as heretofore in the hands of the crown and of lay patrons."

Now, the answer which the Church would return to this *ultimatum*, or final proposal of the State, would depend simply upon whether it regarded the question of the *initiative* of a minister's appointment as an essential or a non-essential point. If it considered the question as to who should nominate to a vacant benefice *one of its own licentiates*, to be a vitally *essential* question involving conscientious principle, then it would be bound to reject the terms of union proposed, and continue independent of the State. But if, on the other hand, it regarded the point, though by no means devoid

of importance, yet as a *non-essential* in the arrangements of ecclesiastical polity; the question would then be reduced to one of Christian expediency, as to whether this particular concession ought to be made to the State or not.

The case we have been supposing was precisely the case which did occur, (at least, as to the second proposal,) at the first establishment of the Presbyterian Church in Scotland. The Fathers of our Reformation did not regard the question of the *initiative* in the nomination of ministers as one of indifference. They laid it down as their opinion in their First Book of Discipline, that "it appertaineth to the people, and to every several congregation to elect their minister;" and again, in the Second Book of Discipline, they include among the Heads of Reformation which they "craved" of the State, (but which it never entered into their fancy they could effect without the State's concurrence,) that "none be intruded without lawful election, and the *assent* of the people;" an arrangement, however, which they immediately admit, "cannot stand with patronages and presentations to benefices." These wise and good men then found themselves reduced (as Christian men often do in this world,) to a choice of difficulties. Here was, on the one hand, a mode of appointing ministers, which appeared to them the fittest and best, and which, had they been unconnected with the State, they would most certainly have adopted. But on the other hand, they could not shut their eyes on the manifold evils which a separation between the Church and the State would entail upon both; they could not bear the thought of seeing thousands of their countrymen left as sheep without a shepherd, as would assuredly have been the case had the legal endowments been withdrawn, poor as the pittance was. The practical question they had to solve was: "Whether shall we forego our favourite mode of providing vacant congregations with ministers, or leave the greater part of the country to be unprovided with ministers at all?" The alternative was a painful one, but these patriotic men nobly sacrificed their own private wishes for the public good. *They preferred an established Church with patronage to no establishment at all;* and every succeeding generation of Scotsmen has honoured and blessed them for the choice. By thus acting they did not admit, that they had no inherent right, as office-bearers of the Church, to place the initiative where they thought fit, but they saw it to be expedient and necessary to wave that right for the sake of the Church's extension and permanence. In short, they just did what it is the object of our proposition to show may be done lawfully. Though possessing inherent spiritual independence, they nevertheless, in a thing non-essential, consented to a limitation of their independence; because they conscientiously believed, that by remaining connected with the state, they would more effectually promote and secure the great ends of the Christian institution, than they would have done by giving the people their free choice of a pastor, at the sacrifice of the Church's state connection. They were clear-sighted enough to perceive, that the arrangement to which they reluctantly submitted, was the means of providing what could not have been provided in any other way, viz. the regular communication of religious instruction

and the universal dispensation of religious ordinances to the people of Scotland. Only make the supposition that they had pursued a different course, and that in consequence of their refusal of the endowments offered by the State, there had been no Protestant establishment in Scotland to supplant that of Popery, and I ask the most furious zealot for illimitable spiritual independence, in what condition our country would this day have been? And farther, I ask him in what condition is it likely to be a hundred years after this, should the Established Church, with all its corruptions, real or imaginary, be now overthrown?

But for an instance of the voluntary limitation of spiritual independence we need not go so far back as to the period of the Reformation. We had an illustration of it not long since in the proceedings of the *Non-intrusion Committee.* On the 2d October, 1841, they intimated to the government their conviction that (to use their own words) "the Church could conscientiously act under a certain measure proposed, and that the Church would accommodate her ecclesiastical procedure to the provisions of such a measure; and farther, that the Church would regard it, if immediately granted, as a great boon."* Nay though it certainly was not the measure which they themselves would have preferred, yet so anxious were they to have it adopted without delay, that the only reason they assigned for rejecting on the 8th October, what on the 2d October they had accepted *as a great boon,* was, that it was found impossible to hurry the measure through Parliament so quickly as they desired, the session being nearly over. But, my friends, *never forget this*—that if Parliament had not then risen, and if the government had complied with the urgent demands of the Non-intrusion committee to pass that measure immediately, *it would at this moment have been the law of the country.* What then was the measure which they at first accepted, though it did not please them; and then rejected, because it could not be made law fast enough to meet their eager wishes? Why (to use again their own words) it was a measure which was "intended to recognise the right of the Church courts, in their judicial capacity," to do what? To reject a man to whom no objection was stated? No, but "the right of the Church courts, in their judicial capacity, to give effect to the objections of the people, if found to be insuperable, in every case in which they should think it their duty to do so, *leaving them at the same time at liberty to disregard them.*" There was nothing said *then* of insisting on a certain number of signatures to make a call valid. There was nothing in the measure (first so suddenly accepted and then so suddenly refused) about giving effect, in all cases, to the simple absolute will of the people, though unaccompanied with reasons stated or objections urged. There was to be, by the terms of the measure, *as dictated by the Non-intrusion Committee themselves,* an implied obligation laid on a Presbytery,—yes, a *civil* obligation, (otherwise it could not have found a place in an act of Parliament, which is a purely civil act) to call for reasons and objections,—yet liberty was at the same time to

* Proceedings of the Non-intrusion Committee, p. 10.

be reserved to them to disregard these objections should they see cause. If any man can persuade himself that this scheme of adjustment to which the Non-intrusion committee gave in their adherence, is consistent with the Non-intrusion principle that "no pastor be intruded contrary to the will of the congregation"—he must have a very singularly constituted mind. The Non-intrusion principle makes the people *sole* judges of the propriety of their *own will, independently of any reasons;* but this measure called for reasons, and made, not the people but the Presbytery, judges of their validity. I concede most fully, that this was not the measure the committee would have preferred;—on the contrary, though they described it as a great boon, and pressed the passing of it into law with all possible legislative dispatch, they at the same time did speak of their accepting it with great repugnance.

And how then is their consent to it to be described? was it that they had given up their own opinions as to what would have been a better settlement. By no means! They retained their inherent independence as firmly as ever, but they just did what our proposition says may be done lawfully, *i. e.* they consented to a limitation of their own and the Church's independence upon this point, because they saw that, by preserving her state connection, she "would be enabled more effectually to promote and secure the great ends of the Christian institution." And this, be it remarked in passing, was precisely the amount of what was done by those who are commonly known as the *Forty*, some months afterwards. They declared simply that the measure in question was one to which they could conscientiously submit;—the front of their offending was this,—that they ventured to profess in the month of April, 1842, what the Non-intrusion committee had professed in the month of October, 1841.

But indeed, my friends, the reasoning we have been pursuing will apply to the result of *any* successful negotiation regarding this matter in which the Church and state may engage,—unless the State can be induced to give up every thing relating to the settlement of parishes entirely and absolutely into the Church's own hands. Suppose now that the Veto Act were at the Church's earnest request legalized immediately, would not the Church be bound in honour to work the new act of Parliament fairly and honestly, and to conform her ecclesiastical procedure to its provisions; no more going beyond it, in the influence allowed to the people, than keeping below it,—giving effect to their *dissent* but not insisting on their *consent*, far less on their free choice? But why would the Church be so bound to act? Would it be because her office-bearers had really changed their private opinions as to the best method of settling ministers? Not at all. There would still be among them, as now, many who object to the Veto, because they think it goes too far,—many who dislike it, because they think it does not go far enough,—many who would prefer the *call*,—many who would gladly get quit of patronage altogether. But if honourable men, they would conscientiously give effect to the "Bill, the whole Bill, and nothing but the Bill." Even those of them who might think the Church has no need of rest yet, and who would therefore agitate for more power to the people—even they,

when acting ministerially in the settlement of a parish would, *if honourable men*, sink their own private sentiments and party feelings in the honest, upright discharge of their "statutory duty;" for however unpalatable may be the assertion, it is undeniably true, that their duty would then have been regulated by statute (be it worded as you please), a statute too of their own earnest seeking. Is it that they would have given up their independence of thought? No; but only that they would have limited their independence of *action*. They would remember, that in consequence of this new act of Parliament—this fresh and solemn compact between the Church and the State, they had consented to their liberty being upon this point restrained, in order that, by continuing an established Church, they might more "effectually promote and secure the great ends of the Christian institution."

There may be some of you, however, who deny the inference we have now drawn. You hold that though the State were to legalise the Veto law, the Church might or might not pay regard to it as she pleased;—for that, in the possession and exercise of her inherent independence (which, say you, nothing can bind), she would be as free still to do in the settlement of ministers, according to her own pleasure, as if that act of Parliament had never been passed. Indeed, those who claim for her unlimited and illimitable independence, must maintain this, to be consistent with themselves. Then just look at the consequences of such a position. The case is this. At the Church's own urgent entreaty, the legislature makes the Veto Act the law of the land. But it is said that the Church,—notwithstanding of this enactment—an enactment adopted at her own suggestion and request—may nevertheless pass new laws of her own, altogether inconsistent with, or opposed to, the now legalized Veto. She may resolve that though there may not be a majority of dissents by the Veto, she shall insist on a certain number of names to a call;—she may determine to refuse to sustain a presentation, and give the people a free choice;—in short, by virtue of her unlimited independence, she may constitutionally do any thing in the matter that may happen to enter into her mind. And by the mind of the Church, people now-a-days understand the minds of two or three hundred persons convened for a few days once a year in General Assembly—excited and inflamed, it may be, by the speeches of hired advocates, and the harangues of revolutionary demagogues, and overawed in their votes by the presence of a popular audience—by the want of moral courage—by the despicable shamefacedness which the coward feels at the dread of being reproached with deserting a party—that dastardly pusillanimity, the opprobrium of our Church courts, which makes many a man publicly support measures which in his heart and by his mouth he privately condemns—rather than be branded as a "middle man," or a "moderate"—rather than be accused or suspected of not *following out his principles* (as it is called)—because he will not run on to the same excess of democratic and rebellious riot with his more violent associates. Well, if that be the ground which they who call themselves the majority of the Church intend to take up, (whatever might be the law passed in Parliament for her extrication out of present

difficulties) then it is evident that to her difficulties, as a National Establishment, there can be no end; the principle asserted is one that carries within it the seeds of fresh anarchy and perpetual confusion. Let me add, that the sooner the State is made aware of this the better: for no government on earth can be expected so far to stultify and degrade itself, as to be the instrument of procuring from the legislature a measure, the terms of which may or may not be implemented by those, at whose application, and for whose benefit, it was expressly passed—a measure which they themselves would hold to be strictly binding upon patrons, upon presentees, upon people, in short, upon all parties but themselves, and they the very party who had been the most urgent and clamorous to obtain it. But if, on the other hand, you admit that the New Act of Parliament would be in fairness binding on the Church, then the phantom of illimitable independence has vanished;—then the Church's liberty is self-restrained—then she would have consented to the limitation, because she conscientiously believed that by preserving her union with the State upon this footing, she would "more effectually promote and secure the great ends of the Christian institution," than she could ever hope to succeed in doing were the union dissolved.

Now, some of our Dissenting friends may here express the opinion that the state of things we have represented is inconsistent with that entire, unconstrained liberty of action which the office-bearers of the Church ought to enjoy, and which for no consideration, even of public advantage, ought they ever to sacrifice. The point may perhaps come before us in the next Letter; but, in the meantime, I would leave with you the question (which is not so easily answered as might at first appear): "Are the office-bearers of the Church among the Presbyterian Dissenters in the full enjoyment of *unlimited* independence in the settlement of *their* ministers? are they *practically* at liberty to settle only whom they please?"

But before concluding this Letter, let me advert, as I promised, to the leading feature in the proceedings of the recent *Convocation*, because it raises a question which is very closely connected with the present subject.

They have announced the doctrine that *in no case* ought the Church to be civilly bound to do any thing in the settlement of parishes at all, and, consequently, that though she were a party to an act of Parliament regulating the matter to-day,—she might, with perfect impunity, violate its provisions to-morrow; and, moreover, that let her do what she will in the way of encroaching upon civil rights, (which by her acceptance of such an act she was a party to guarantee) she ought to be released from all obligation to grant any redress. They virtually demand, that whatever may be the law of the country on the subject, it shall be declared, that the Church never can act illegally,—never can deal injuriously or unjustly—never can be made legally accountable for her conduct in the settlement of parishes, be that conduct what it may. These, indeed, are not the precise words of the claim, but that this is its real ultimate import must be manifest to every one who has given the subject the

slightest consideration. Let me shortly notice, therefore, one of the fallacies upon which this claim is based.

In one of the resolutions passed at the Convocation, it is said, that the decisions in the case of Auchterarder, (first finding the Presbytery had acted illegally and unjustly, and then awarding damages to the aggrieved party)—are founded "chiefly, if not altogether, upon the act of Queen Anne restoring patronage." Now, while it is certainly true, that that act did give occasion to the decisions in question, because it happens to be the present law of the country for the settlement of parishes, it is altogether a mistake to suppose, that the same, or similar decisions, would not have been given, though the law regarding the settlement of parishes had been different from what it now is. Let us suppose the act of Queen Anne repealed, or rather let us suppose it never to have been made. Let us fancy ourselves living, not in the year 1842, but in the year 1692, *i. e.* a short time after the era of the Revolution. It is important for you to bear in mind, that the settling of vacancies was not then left to the Church, as had been done in the year 1649. It was as really the subject of *civil* enactment as it is now; and wherever there is a civil enactment there must be some measure of *civil obligation*, otherwise the law might remain for ever a dead letter. The act which was passed for the settlement of Parishes at the Revolution vested the appointment of a minister in the heritors and elders, but if the people disapproved they were to give in reasons—of which reasons the presbytery were to judge—"at whose judgment, and by whose determination, (it is said) the calling and entry of a particular minister is to be ordered and concluded."

Now, it is quite conceivable, that a dispute might have arisen among parties as to the precise amount of power which that last clause gave to the presbytery. Some might have contended, that it left *the entire matter* in the presbytery's hands to settle the parish as they pleased; while others (as I conceive far more correctly) would have maintained, that it only left to the presbytery the power to cognosce and adjudicate on the reasons offered by the people, or judicially ascertained by themselves, as a bar to the induction of the particular minister-elect. It will not be pretended, that the presbytery, by that act, would have been at liberty either to call a man themselves, or to give a free choice to the people. And if its object was to allow them to do in *all* respects as they thought fit, it was surely a very needless piece of legislation to prescribe in the first place the election by heritors and kirk-session, if their nomination could be subsequently set aside by the presbytery in any way than by the rejection of the individual elected, on the ground of personal disqualification, or of the objections of the people judicially sustained by the presbytery. If that was not the design of the act—if its object was to place the uncontrollable power in the presbytery's hands, even to the nullification, direct or indirect, of the prescribed initiative,—it would surely have been a much simpler method for the State to have said to the Church, as in 1649, "Do in the whole matter as you please."

But be this as it may, the point which I have at present to press upon your earnest attention is this, viz., that in the event of the above or any similar dispute having arisen, as to the legal interpretation of that act of 1690, there can be no question, that the civil courts would have had to solve the difficulty, just as they were called to do in the case of Auchterarder, under the act of Queen Anne. Now, such being the law of the country at the time, subject to the interpretation of the civil courts, suppose the Church had passed some law of her own, which these courts found to be inconsistent with, or contrary to, the law of the State, as by them interpreted. Suppose, for example, (*it is the case in point*) that, instead of calling for the people's reasons, "in terms of the act of parliament," the Church had *then* passed her Veto Law, and resolved to reject the minister elected by the heritors and elders, because of the simple dissent of the people, without reasons at all, there can be no doubt whatever that it would have been perfectly competent and constitutional for the civil courts to come to precisely the same findings as in the case of Auchterarder, *viz.*, "that the presbytery, in so doing, had acted to the hurt and prejudice of the minister-elect, illegally, and in violation of their duty, and contrary to the provisions of the statute libelled on." Some may imagine, that because there was no "binding and astricting clause" in the act 1690, (as there is in the acts 1592 and 1712) the words "in violation of their duty" could not have been employed, and that at least no damages would have been awarded. But if you look at those immutable principles of equity by which courts of justice ought ever to be governed, you will perceive, that it is enough for a man to plead and prove that he has been illegally wronged, to entitle him to equivalent legal redress. Put the case that, under the act 1690, an illegally rejected nominee was left without any recourse. The state of matters would have been this: It is the declared will of the sovereign power of the country, as announced in a solemn act, interpreted by the law's authorised expounders, that the nominee of the heritors and elders of a parish shall be put in possession of the emoluments of the benefice, unless the presbytery find him personally disqualified, or shall sustain the objections urged against him by the people. But the presbytery choose to reject him without calling for reasons at all. And here then is a man, who has received from the state a certain valuable vested right, from the possession of the civil benefits of which he is declared by the competent court to be illegally and wrongously excluded by the only party authorized by law to give him possession. To suppose that a person so situated is to be left without redress, would be a libel on the law and justice of a civilized country.

Or make the supposition, that an act of parliament were to abolish patronage altogether, and to vest the appointment of a minister in the parishioners, and that a presbytery were to refuse to take upon trials for induction the man who was the people's choice, —would *he* have no right to complain to the civil court for civil redress, in so far as his illegal exclusion from the benefice would be concerned? Most assuredly he would. You may indeed, safely lay

it down as a fixed general principle, that whenever an act of the Legislature confers a civil right, and any man or body of men are declared to be illegally and wrongously destroying that right,—there is in law and equity a plea for damages. For the Church to claim to be exempt from all responsibility on account of her own procedure in this matter, however erroneous or however unjust that procedure may be, is neither more nor less than a demand to be permitted to accommodate at her pleasure the law of the country to her own,—instead of either accommodating her law to the declared law of the country, or putting an end to her State connection. You can conceive of a government being inclined to leave the Church to act in the settlement of parishes entirely as she thinks fit; but to suppose that any government should, at the Church's request, procure from the legislature *one* law for the settlement of parishes, while the Church shall be left at liberty to make *another* for herself,—that is an expectation which no sane intellect can ever imagine to be realised, unless in a country where equal rights, consistent law and common sense government have ceased to reign.

I am,

My Dear Friends,

Your affectionate Pastor,

N. MORREN.

*Greenock, Dec.* 15, 1842.

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# MY CHURCH POLITICS:

IN

# LETTERS TO MY PEOPLE.

BY THE REV. N. MORREN.

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## TERMS OF UNION BETWEEN CHURCH AND STATE.

My Dear Friends,

The point which I had to illustrate in my last Letter was *the voluntary limitation of spiritual independence*; or in other words, the principle, that the office-bearers of the Church may lawfully put a restraint on their inherent liberty, in order to secure a greater amount of public good than could be obtained by the most unrestrained exercise of their freedom. This position I endeavoured to establish by arguments drawn from the fact of the limitation of individual independence in all social and political arrangements, and more or less, in all unions formed among human beings. We thence inferred the probability, if not the necessity, of such a limitation on the part both of the Church and the State, in any harmonious and permanent union into which they may enter for their mutual benefit. And we finally exemplified both the reality and the lawfulness of the limitation supposed, by instances drawn from the early and more recent history of our own Church,—instances to which the advocates of the opposite theory of illimitable independence cannot reasonably object, because they were furnished either by their own ecclesiastical leaders, or by the Fathers of the Scottish Reformation, whose memories we all revere.

But leaving now matters of abstract principle, let us come to matters of *fact*. Our next proposition is: *That the Church of Scotland, by the terms of her union with the State, did virtually*

*consent to a limitation of her independence in certain matters both of doctrine and discipline.*

Though this assertion follows the point we last discussed in natural sequence, I beg you to observe, that the two things have no necessary connection together;—the proof of the one does not rest on the proof of the other. The question which is now before us, has nothing whatever to do with the lawfulness or unlawfulness of the limitation we have described;—it is purely a question of historical fact, as to what was done or was not done by the Church of Scotland. I may have failed in convincing some of you, that the office-bearers of the Church ought ever to consent to have their liberty restrained; and yet it may not be the less true, that such a consent was formally or virtually given by the Scottish Church. Be your opinion of the propriety of the self-imposed restriction what it may, I request you at present to dismiss it from your minds, and bend your attention, calmly and without prejudice, to this single inquiry, viz. "Did our National Church, by the terms of her union with the State, consent either in form or substance to any limitation of her independence, in matters whether of doctrine or discipline?"

A superficial or hyper-critical reader, on comparing the language of the proposition now before us, with that of the proposition last illustrated, may fancy he detects some inconsistency or flaw. We have said, that it is only in non-essentials that the Church's office-bearers may lawfully consent to allow their independence to be limited, and yet we now say that the Scottish Church consented to a limitation of her independence, even in matters of doctrine, meaning by that the fundamental articles of her faith and worship, which certainly never can be classed among things non-essential. A very few words will serve to clear up the misconception, and remove the apparent incongruity. Every one knows that our independence may be voluntarily limited in two different ways;—either by our own self-moved resolution, our own spontaneous proposal to that effect, or by our consent to a proposal of limitation emanating from another party. In the latter case, we may give our consent reluctantly, as having only a choice of difficulties, but the consent, when given, is still given voluntarily. Though it be more or less a restraint, it is a restraint we put upon ourselves. It is not to be confounded with, because it is essentially distinct in its nature from, the force and compulsion violently put upon us by others, by which our inherent independence is annihilated. Now there was this difference between the limitation of the Church's independence in essentials and non-essentials, that with respect to the first, it was her own proposal to the State, or at least it was as much her own desire as that of the State, that the creed she had solemnly adopted as the confession of her faith, should be embodied by the State in an Act of Parliament, and should form the basis of the union between them. But with respect to certain non-essentials in discipline or Church government, (which had not been included in her public standards,) they were proposed to her by the State, as a condition of her establishment; and by her consenting to be established, and by her remaining established upon

the conditions imposed, she *virtually* consented to them, though the arrangements might not be such as she would have preferred, had she been left to her free choice. Still her acquiescence was not compulsory, but was her own voluntary act, by which she selected what appeared to her the least of two evils, viz. an Establishment with a limitation in non-essentials, rather than no Establishment at all.

With this explanation of the phraseology of the proposition, you will now understand it to mean, that the Church of Scotland, by the terms of her union with the State, *acquiesced in* a limitation of her independence as to the essentials of doctrine, and *submitted to* a limitation of her independence as to certain non-essentials in Church government.

Some years ago, this proposition would have required but little proof, for it was generally admitted by all who were conversant with our Church's history. But since the present controversy originated, such a misty haze has been thrown by certain disputants around the plainest subjects of inquiry, that facts the most undeniable and principles the most self-evident are seriously called in question, so as often to render a proof necessary of what appears scarcely to require it. For example, nothing would seem to be clearer, than that there *is* a union between the Presbyterian Church and the State in Scotland which did not once exist;—in other words, that there is an Establishment of the Church by the State; and yet even that has sometimes been doubted. It so happens, that in one of the early Acts of the Scottish parliament with respect to this matter, it is declared that "there is no other face of kirk, nor other face of religion than is presently, by the favour of God, *established* in this realm." And—will you believe it?—men have gravely argued that here was an admission, that the State did not establish the Church at all, but found it established, and had only to declare its establishment. Can you conceive more egregious trifling? The whole turns upon a miserable play upon the word *established*. Take the following case. You visit an island of the South Seas, and finding the bulk of the inhabitants making a religious profession, you write home, that Christianity is now happily established in the room of heathenism; but you would not thereby necessarily mean that Christianity was the religion of the State, for the supreme power of the country might be still hostile or indifferent. Yet, if in course of time, the State took it under its special protection and countenance, recognizing it as the religion of the nation in its corporate capacity, and making a public provision for its ministers—you would then say, (using the word in quite a different sense,) that a certain form of Christianity was now *established* as the religion of the country.

Thus it was in Scotland. The Protestant Church did certainly exist, and might be said to be established, *i. e.* to have a firm footing in the country, before any Act of Parliament was passed in its favour; but still it was not until the passing of that Act, that it became the Established Church, *i. e.* the recognized, endowed, adopted Church of the country. Up to that moment, as an Established Church it had no existence, and every immunity and prerogative,

which, as an Established Church it possesses, it has derived from the State of whom it holds them. Then, in short, was that union formed between the Church and the State, the terms of which we are now to consider.

I suppose you will admit, that where there is an union between two parties, there must needs be some compact or agreement, either express or implied, by which the union may be regulated; for without that, how is it possible that harmony can long be preserved? If the rights and duties of the respective parties be not in some measure defined,—will there not be the risk of a constant conflict of interests, which would speedily lead to a dissolution of the connection? And yet another of the unmeaning paradoxes which some writers are fond of venting on this subject is, that between the Church and State in Scotland there was, and is, no compact whatever. In that case, if the Church is bound in nothing to the State, do they mean that the State is bound in nothing to the Church? No, that does not meet their view either,—for one of them after making the assertion that there is no compact, maintains in the same breath, that the State does give to the civil court jurisdiction in matters ecclesiastical, but that the amount of their jurisdiction is the enforcing the payment of minister's stipends.* There is a compact then, but according to this view of it, it is wholly one-sided. In one of the resolutions of the late Convocation, "they fully acknowledge the right of the civil magistrate to fix the terms upon which he will establish the Church,"—and yet according to this theory, he made no terms at all in regard either to doctrine or discipline—no terms either for himself or for any of his subjects —no terms either for the crown or for lay-patrons. The theorist proceeds on the strange assumption, that the only thing in the arrangement the civil magistrate was anxious to provide for, was the regular payment of the ministers' stipends, leaving them to act in all things which they may judge to be within their own province entirely as they please; for if any limit was set to their freedom, then it must have been so stipulated, and pray what is a stipulation but the condition of a compact? The entire argument on this head is only a silly *logomachy* or dispute about words, and I notice it, merely because you will still hear it from those who delight in weaving cobweb theories, which a single puff of wind will destroy. Indeed, it is commonly by the breath of their own framers that they are blown to shreds; as a proof of which it may be mentioned, that the writer just quoted, who denies there is any compact between Church and State, admits shortly after, that "if the Church were to alter its Confession of Faith, the State would be perfectly justified in withdrawing the endowments."† But how could such conduct on the part of the State be justified, unless upon the supposition of a previously existing compact, which the Church had violated, and therefore the State regarded it as at an end?

* Dr. M'Farlan's Letters, Lett. 7, p. 1, 2.
† Dr. M'Farlan's Letters, Lett. 8, p. 6.

Holding it then to be matter of certainty that such a compact does exist, I proceed to remark, 1st. *That by the terms of the union between the Church and the State, the Church consented to, and acquiesced in, a limitation of her independence in certain matters of doctrine*—I mean, of course, those contained in her public authorised standards. It is perfectly true, that the State did not dictate the Church's creed—it was purely of her own framing. And to confine ourselves to the last great transaction between the two parties —the settlement at the Revolution—though there was not the same formal presentation of the Confession of her Faith by the Church to the State, which had been made at former periods, yet there is no question that the Act of Parliament by which that Confession was ratified and established, was fully and joyfully acquiesced in by the Presbyterian Church, as was signified by her acceptance of the State Establishment thereby secured. You sometimes hear it asserted, that the Confession of Faith, in consequence of the Parliamentary sanction then given to it, and renewed in the treaty of union with England, became *the law of the land;* and so, doubtless, in a certain sense it did, but not in the ordinary sense in which these words are employed. It were absurd to maintain, that that Confession is binding on all the lieges in the same way as an Act of Parliament binds them, for then the principles of a free toleration would be cut up at the root, and other singular inferences would legitimately follow, of which people are little aware. But the chief object of the State in embodying the Confession in an Act of Parliament, was thereby to mark out more distinctly, the particular Church, holding that Confession, as the Church which it adopted and endowed as the National Establishment. For you will observe, that by the terms of the Act 1690, the estates of Parliament "ratify and establish the Confession of Faith read in their presence, and voted, and approven" —not so much as their own Confession, or as the Confession of the country, but "as the public and avowed Confession of this Church." It was as if they had said: "We hereby solemnly acknowledge this Confession as your Confession, and we will henceforth recognise by this Confession, the Church we now establish as the National Church of Scotland." Instead of this, they might have simply said—"We now establish the Presbyterian, instead of the Episcopal Church;" but then the question might often have arisen in the law courts, amid conflicting claims for State endowments, (of which many Episcopalian incumbents still held possession:) "How is a Presbyterian clergyman certainly to be known? What is the legal test of his principles, necessary to establish his right to a parochial benefice?" The test is here—in the Confession of Faith, ratified and approven by the estates of the realm, as the Confession of the Established Church, and which by a subsequent Act, they "statute and ordain" shall be subscribed by every minister or preacher thereof, as the Confession of his Faith.*

Now you will observe, that so far was all this from being displeasing

* Here, by the way, is another purely *spiritual* act, (which it belongs to the Church to regulate,) yet also regulated and enforced by a *civil* obligation.

to the Church, that it entirely met her most anxious wishes; because it not only had the effect of completely dis-establishing Episcopacy, and making over to Presbytery the entire State provision for a National clergy, but it gave her, moreover, the amplest security for the continued conformity of her own office-bearers to the faith and worship so freely chosen by herself, and so fully ratified by the legislature. But mark now, what was a necessary result of this arrangement. If the State, by its solemn ratification of the Church's Confession, has bound itself to give exclusive countenance to the Church by whom that Confession is professed—the Church, on the other hand, has bound itself to make its continued adherence to that Confession one of the terms of its State-union—one of the conditions of the compact, by which it enjoys its peculiar advantages as a State Church. Were it unconnected with the State, it would be free to alter its creed at its own pleasure, but by its acceptance of the Act of settlement, which embodied a certain Confession of Faith as the Confession of its Faith—the Church, *in its character of the Established Church*, did acquiesce in a limitation of its spiritual independence in reference to all matters of doctrine which that Confession embraced.

Some of you may think this an advantage, and others a disadvantage; but be your opinions of the arrangement what it may, it is undeniably true, that as a *National Establishment*, the Church has denuded herself of the power to make any alteration in her public formulary of doctrine without the consent of the State. I do not go the length of saying, with the writer already quoted, that if the Church were to alter its Confession, the State would be perfectly *justified* in withdrawing the endowments; it is enough to say that she *might* do so, without any breach of faith. Much would depend upon what the proposed change in the Confession might be, and the numbers in the Church desirous of effecting it. The principal points which a statesman is likely to stipulate for in the creed of a National Church are, that it shall contain nothing hostile to the principles of sound morality, subversive of social order or good government, or inconsistent with the allegiance which is due to the sovereign power of the country. Were the Church as a united body, at any time to represent to the legislature, that she had received new light on certain matters of doctrine set forth in her standards, and that she and her people were unanimous, or nearly so, in wishing to have the public Confession in these respects altered—there is little doubt, that if the alteration proposed contained nothing that could be construed as prejudicial to the interests of the commonwealth—the legislature would not refuse its sanction, which would be embodied in a new Act of Parliament, ratifying and approving the new Confession. But if, on the other hand, the Church took it upon her of her own authority, and without any communication with the State, to change her Confession in the least jot or tittle of its contents—there is as little question, that by such procedure the terms of the compact between them would be violated, and all the benefits and immunities forfeited, which the Church enjoys as the religious establishment of the coun-

try. And how would the forfeiture be proclaimed? The State would probably not move in the matter at all, but allow things to go on as at present *in due course of law*. She would, perhaps, no more interfere than she is doing now between the Church and the law courts; but the consequence of the Church's violation of the compact, if persisted in, would be as surely, but slowly, to dis-establish her, as if an act of the Legislature were to be passed for the express purpose. What would probably happen? Why though the State—the body politic, might remain passive—a single dissatisfied heritor would only have to complain to the civil court, saying, "the Church of which this clergyman is a minister, no longer holds the Confession ratified by the State; and upon that ground I claim exemption from the burden of any longer supporting it." That the exemption would be granted there can be no manner of doubt; and unless the State chose to interfere by a fresh enactment, the Church, *as an Establishment*, would gradually be uprooted.

And what would be the chief difficulty the Legislature would feel in framing a new law to meet the case? Why, the very difficulty which they would experience now, were they to attempt to legislate on the principles avowed by the recent Convocation. They might have no objection whatever to the alteration in her Confession made by the Church, but unless she admitted her error, her excess of jurisdiction, as well as breach of faith, the State could not easily allow it to be established as a precedent, that she should authoritatively make such changes without its sanction. That is precisely what renders legislation next to impossible on the subject of any claim to unlimited independence and uncontrollable jurisdiction, whether it relate to the revolution settlement of 1690, or the patronage law of 1711.

With respect, however, to the point at present before us, it seems now acknowledged by many by whom it was once denied, that the Church, by the terms of her union with the State, has consented to a limitation of her independence, as to all points of doctrine stated in her Confession; so that whatever changes of opinion the lapse of time or other circumstances might occasion in the minds of her office-bearers, she is not at liberty, *as an Established Church*, to add to the words of that formula, or take from them, without the State's concurrence in the change. Now, those Christian bodies who object to the use of creeds and Confessions of Faith altogether, may regard this state of things as an ensnaring bondage; but those, on the other hand, who consider such public symbols of doctrine as an approved safeguard of scriptural orthodoxy, and who look upon the Westminster Confession as exhibiting, on the whole, a correct delineation of their own religious faith;—these persons, (and they include the great mass of the Christian people in Scotland, whether in the Church or out of it,) so far from viewing this self-imposed restriction as a grievance, discover in it a strong additional guarantee for the permanency in the country of that system of faith and worship, which they themselves believe to be most in accordance with the Word of God, and most conducive to the welfare of the community. Not that such a Confession, though made the basis of union between Church and

State, by being incorporated in an Act of Parliament, affords security for the *personal private* orthodoxy of all the Church's members, or even of all the Church's office-bearers; but it does become a security, ample and most important, for the *public professed* orthodoxy of the Church as a body, and is thus the means of preserving wholesome doctrine in the "form of sound words," and of displaying the testimony of "the truth as it is in Jesus" to many succeeding generations. It is undeniable, that towards the close of last century, there was a great leaven of unscriptural doctrine in the public preaching, and much more, it is believed, in the private sentiments of many ministers of the establishment. The evil rose to so great a height, that the leader of the Church in those days (I mean Principal Robertson,) expressed his fears, that after his death an attempt would be made to get rid of the Confession of Faith altogether. The horrors of the French Revolution, as showing the bitter fruits of national infidelity in the excesses of a people set loose from all restraints, produced a powerful re-action in Scotland, as elsewhere, in favour of the "good old way." But independently of that, there is no doubt that the fact of the integrity of the Confession of Faith being, and being known to be, the indispensable condition of the establishment of the National Church, always presented the most formidable obstacle to any change in its doctrines, unless such as would have been not only approved by the legislature, but supported by the great mass of the people. The attempt of certain Socinians in the Church of England to procure an Act of Parliament, to dispense with subscription to the Thirty-nine Articles failed of success, and not more successful, we believe, would have been any similar attempt in Scotland to remove our "ancient land-mark"—the Westminster Confession. You may rest assured, however, that had our Confession gone, our Catechism would not have remained long behind; and if therefore, you attach, and justly attach, much value to that admirable compendium, which has been the great EDUCATOR of our countrymen in Christian knowledge, forget not, that you are, under Providence indebted, in no small degree, for its continuance as a public standard and text book, to the connection between the Church and the State, by the terms of which the doctrines therein contained are ratified and approved as the basis of the union between them.

But while I have thus pointed out some of the practical advantages of the Church's spontaneous limitation of her independence in doctrinal matters, it must be admitted that in *theory* it may be deemed open to serious objections. It may be said with some plausibility and truth, that if there be any thing in which the office-bearers of a Christian Church should be absolutely free, and should assert and exercise their freedom, untrammelled by any stipulations whatever, it is surely in matters of doctrine and faith,—in the views they may be led to form, by their continued and prayerful study of the scriptures, respecting the "foundation of the apostles and prophets, the pillar and ground of truth." It may further be said, that it is no satisfactory answer to affirm, that the office-bearers of the Church are, in point of fact, free to alter their creed when they

please; if they are a minority, by leaving her communion, and if a majority, by dissolving connection with the State. It may be urged, that it is this very alternative proposed to them, as the condition of their independence, which most cramps their freedom of thought and their liberty of action, and has the tendency to fix for ever, and *stereotype* (so to speak) both their own faith, and that of the people of whom they are the appointed guides,—whether that faith be right or wrong. Well, plausible as these objections are, it is no part of my present business to reply to them; I leave it to those Churchmen who claim for the Church illimitable independence *as an Established Church*, which I do not. Admitting the inconveniences of the self-prescribed limitation, I believe them to be more than counterbalanced by its advantages. If the "form of doctrine" exhibited by the Church, be in accordance with the great principles of scriptural orthodoxy, then the same reasons which prompted her to adopt it, will justify her in binding herself to the State to retain it; and every "calm observer" must perceive, that the benefits resulting from such an arrangement to the union, the order, the peace, the practical edification of the Christian community, are more than an equivalent to the power of altering the public creed according to pleasure,—a power which, in the nature of things, holds out an incitement to constant change, and a temptation to be "carried about with divers and strange doctrines," instead of having "the heart established with grace."

We come now to the *second* point in the proposition, viz., *that the Church of Scotland, by the terms of her union with the State, did virtually consent or submit to a limitation of her independence in certain matters of discipline.* With regard to the great outline of her government by Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies, it was embraced under the former head, having been solemnly settled between her and the State, in the same way as the articles of Faith. And with respect to her *discipline* in the stricter sense of the term, (*i. e.* the administration of sealing ordinances and the infliction of spiritual censures,) there was no limitation demanded by the State, or conceded by the Church. No Act of Parliament exists giving any one, as a citizen, a right either to baptism or the Lord's Supper, or making it obligatory on the Church to restore to Church privileges such as she may have seen fit to exclude. But (to speak of nothing else), there is one important point in the arrangements of her polity, in respect to which a limitation was certainly set to her power,—I mean in the mode of settling vacant parishes; and my object now is to show that her consent to that limitation, though reluctant, was no less real, than her acquiescence in the restriction on her freedom with regard to matters of faith and worship.

Now to aid you in forming a clear conception of this new question, I must beg of you to carry along with you two preliminary considerations. The first is, that our object at present is not to ascertain *how far* the Church's independence is actually limited *by law* in regard to the settling of vacancies, (that will be the subject

of future inquiry, as included in the question of the extent of the Church's jurisdiction,) but we are simply to consider whether it is limited *at all;* and secondly, that though a nice distinction has of late been drawn between the Church's being placed under a *civil* and under a *moral* obligation to do certain things in this matter, it is not necessary to raise that question here. It will be enough if we find that she is *bound* in any sense whatever; for if we can prove to your satisfaction, that by the terms of her union with the State, she has virtually bound herself, it matters not *how*, to do any thing in the settlement of parishes it matters not *what*—then the idea of her unlimited independence and uncontrolled jurisdiction necessarily falls to the ground. The only remaining questions will then be, first, Seeing there *is* a limit, by whom is it to be legally and authoritatively defined? and secondly, When thus defined, is it such as the Church can conscientiously submit to?

To conceive then of this matter aright, you must form a proper idea of the relation in which the Church stands to the State. I object decidedly to its being called the *creature* of the State, because the phrase implies a degrading subordination, which, in the case of the Church of Scotland, I deny to exist. Both of them, in entering on the union, meet on a footing of perfect equality,—both are equally free to propose their own terms, and reject those of the other party; —both have an inherent indefeasible right to form or decline, to continue or dissolve the union at their pleasure. But there is this peculiarity in the relation which they bear to each other, that it is *not the Church which employs and establishes the State, but the State which employs and establishes the Church.* They stand, not in the position of master and servant indeed, which would imply inequality; but in the position of employer and employed, a relation which admits of perfect equality,—only that in this case it is the *employer* who draws up the compact, leaving it to the *employed* to accept the conditions or not as he pleases. Now if you keep this distinction carefully in view, it will enable you to understand better where the terms of the union are to be found, and by whom they must needs be interpreted. The terms are imbodied not in acts passed by the Church, but in acts passed by the State. They are to be found, not in Acts of Assembly to be interpreted by the courts of the Church,—but in Acts of Parliament to be interpreted by the courts of the country, which though erected indeed by the State, are equally independent, in their functions, of both the contracting parties.

It is needless to inquire whether another method of forming and expounding the compact between Church and State might not have been devised;—sufficient for us is the fact, that such was the course adopted. The Church may, or may not have been consulted as to the various acts of Parliament by which her relations with the State are regulated;—but be the contents of these acts what they may, fix this in your minds, that they were not her own acts, but the acts of the State. By those acts, the State as the *employer* dictates the terms upon which it is willing to accept of the Church's services,—while the Church, the *employed*, is free to accept or reject the terms as she

thinks fit, not only at the commencement of the engagement, but at any period during its continuance.

The question then arises:—"When and how is the Church to be in fairness understood as accepting the conditions proposed by the State, and embodied in acts of Parliament? Does it require a *formal deed* of the Church, *directly* approving of, or acquiescing in, or submitting to the terms proposed?" Not at all. For you must admit, that according to all analogy drawn from transactions between an employer and the person employed,—the latter must be understood as submitting to the terms prescribed, when he enters upon the employment, or at least when he continues for any length of time in the employment, accepting the emoluments of the office and doing its appointed duties. There may be some of the conditions to which he objects, and against which he remonstrates and protests,—both on entering upon his functions and afterwards;—but the fact of his having undertaken the work at all, and still more the fact of his continuing so long both to perform the work and to receive the wages, affords the best, because the most practical evidence, that he *has* consented, though it may be reluctantly, to the conditions imposed.

Nor does this apply merely to the commencement of the connection between the State and the Church, as between the employer and the employed, but to whatever the State may think fit to propose during the continuance of that connection. It may embody some new condition in a new act of Parliament. The Church is certainly not bound to submit unless she pleases;—she may exhaust every constitutional method of obtaining a change in the enactment; and in the event of her failing to procure it, she may either dissolve or continue her State connection as she deems expedient. But, mark me,—if she resolve on the latter alternative—if notwithstanding the failure of all her remonstrances and negotiations, she still decide to retain her national endowment, again will she be held as virtually consenting, though it may be very unwillingly, to the new condition imposed.

Now, let us apply this to the terms of union, in reference to the *initiative* in the mode of settling parishes, which were proposed by the State to the Presbyterian Church of Scotland, by being ingrossed in acts of Parliament, and which were substantially acquiesced in by the Church, because if she did not formally agree to act under them, she did in point of fact so act for generations after they were passed. It will not be denied, that had she been unconnected with the State, the nomination of ministers is one of those things which, being within her own jurisdiction, she would have regulated according to her own mind, and that certainly she would not have placed it in the hands of the lay-patrons. Yet what says the act of Parliament 1567? "The presentation of laick patronages always reserved to the just and ancient patrons." What says the act 1592, the Charter of prestery? "Providing the foresaid presbyteries be *bound* and *astricted* to receive and admit whatsoever qualified minister is presented by his majesty, or other laic patrons." What says the Act 1712? "The presbytery is *bound* and *obliged* to receive and admit a qualified

minister presented by the patron." The present question, as I said before, does not relate to the precise *nature* of the obligation under which Presbyteries thereby came, (be it moral or civil,) nor does it concern the precise *amount* of obligation contracted, (that is a question for the law's authorised interpreters,) but what I beg you to fix your attention on, is the most evident fact, that there is here implied *some* obligation to do *something*. If any one, "whether he be clothed in the garb of a minister or no,"* has the cool presumption to tell you, that the same law of the country which secures to him his emoluments and prerogatives as minister of the Established Church, likewise "binds, astricts, and obliges him" to do something, and yet that these words "bind, astrict, oblige," involve no obligation whatever; that the word *bind*, binds him to nothing; that the word *oblige*, obliges him to nothing; then tell him plainly, that he is lost to every perception of common honesty, and to every sense of common decency. But if on the other hand, he admits that it does bind him to do something in the settlement of parishes, (were it only to sustain or give effect to a presentation)—then here is a limit to his independent jurisdiction—and in this particular matter of discipline, therefore, the Church has virtually, substantially, practically consented to the terms of the union which the State proposed.

You allege, that after the Act of Patronage had passed, the Church loudly protested against it, and for many years continued to protest. Granted—but did she demit or propose to demit her office of instructing the people, either as to its duties or its emoluments? *Never once.* The office-bearers who held rule at the time of the passing of that act, might have had some reason to complain of the imposition of any new law on the part of the State; but as to their successors down to the present day, they entered upon office in the full knowledge that such was the law—a law, which at their own admission, as members of the Presbyteries recognized by the State, they became solemnly bound to implement, or to cease to belong to the Presbyteries named in the acts of Parliament, as placed under co-relative rights and duties—as enjoying certain privileges, and as laid under certain obligations.

Take the following illustration, in which there is nothing degrading to the Church, for its high honour is to be the "best public instructor" of the people. The father of a family engages a tutor to his children. He draws up a document, containing the conditions of the engagement, which the tutor is free to accept or not as he pleases. There are various points which are not to his satisfaction, and which he endeavours to get altered or modified, but without success. Still he enters on the situation; he does the work and receives the salary for a long series of years. You happen to ask him, "What is the nature of the agreement or compact between you and your employer? "*Compact!*" says he, "there is no compact whatever." "But what," you naturally ask, "are any of the terms

* Dr. M'Farlan's Letters, Lett. 8, p. 7.

upon which your service is accepted?" Fancy your astonishment, were he to admit, that in a document drawn up by his employer, either at the commencement, or during the continuance of the engagement, and intended to regulate the terms, there was a proviso that he, the tutor, should be *bound* to do something, and yet, that he now maintains there was no compact at all; or at least, that the obligation specified was in no sense and in no degree binding upon him, though he had been all the while fulfilling it (much against his will) ever since it had been imposed. Why do I dwell on this point? Why, because there are at present so many discreditable shufflings, and serpentine wrigglings, with a view to escape from all obligation whatever.

It is now more than a hundred and thirty years since the law of patronage was enacted. I am not called on to defend it, for I am fully sensible of its evils when unchecked. But how the office-bearers of a Church which has existed under it so long, and every one of whom took office in the perfect knowledge of its being the law of the State—can *now* pretend to be free from all obligation on the subject, is utterly inconceivable to men of plain sense and honest upright dealing. Why, the very enactment of the Veto Law was a broad admission that the independence of the Church upon this point was limited; that in the exercise of her spiritual jurisdiction she was precluded from so much as *touching* the initiative; and by her selection of the Dissent by the Veto as a less infringement of the patron's right, than would have been the Assent by the Call, she testified her conviction, that by the law of the country her power in the settlement of parishes was restrained—a restraint, however, to which she herself, by continuing her State connection notwithstanding, had virtually and practically given her consent.

Nay, in the extraordinary and unaccountable conduct which certain presbyteries are at present pursuing, by refusing to sustain a presentation, and yet taking steps towards the settlement of the presentee alone, there is the strongest testimony to the same fact. If they think the act of Queen Anne is not binding on them, why do they moderate in a call to the presentee at all? Why do they not ask the heritors and elders to elect in terms of the previous act, 1690? Or if they think that no act of Parliament can bind them—why do they not take the appointment of ministers simply and absolutely into their own hands? Why, because though they would like not to obey the law, they have not yet courage to determine absolutely to break it.

The state of matters then with respect to the Church's constitutional power in the settling of vacancies is this. By the long prescription of one hundred and thirty years, during which it became her invariable practice to sustain presentations, she has admitted the legality of the patron's right, which certainly cannot be invalidated by the recent decision of the House of Lords, in the case of Auchterarder, be the Church's opinion of that judgment what it may. Here then is one important point, (viz. the *initiative nomination,*) in reference to which, her liberty as an Established Church is self-re-

strained; and were that the only point, it would be sufficient to establish the *principle* of the limitation in matters of discipline, which our proposition asserts. But more than this—when the majority in 1834 did not venture to insist on the *consent* of the people to the appointment of the patron's nominee—what was their reason? Was it that they objected to the long-established form of "the call?" Nay, they kept up that form as before, but they did not require a single subscription to make the call valid, far less did they require the majority of signatures in the parish—and why? Their avowed and only reason was, because they feared that would be held by the law courts an encroachment on the patron's right, less direct and extensive, but no less real and illegal than would be the rejection of his presentation. Here then was another tacit admission of the limitation of independent jurisdiction, made even by those who are heard to maintain that the *consent* of a congregation (and not merely the absence of their dissent) is essential to the pastoral relation. Seeing then, that by the course both of her long practice and her recent legislation, the Church does acknowledge some limit to her power in this matter, the only remaining questions are: By whom is the precise limit to be authoritatively defined? Is it by the Church herself, or is it by the civil court, as the majority themselves believed when they shrunk from giving effect to the call? And then, seeing that the civil court has found that the Church, (bound as we have seen to the patron's initiative,) can no more introduce as an element in the nomination a negative veto than a positive call, is *that* a limitation which the Church can conscientiously submit to, as she unquestionably submits to the two already imposed?

The discussion of the first of these questions, as well as of other points connected with the Church's jurisdiction, will form the subject of my next Letter. But before bringing the present to a close, I must be excused for alluding to a matter which is purely personal to yourselves and me.

It has been publicly asserted by a clergyman in this town, that in consequence of the views which I have already felt it my duty to lay before you on this Church Question, I have "alienated from me a considerable portion of an already diminished congregation."* I shall say nothing, my friends, of the good taste, the generous brotherly-kindness, the gentlemanly feeling, the honourable principle, which characterize such a remark; because where we do not look for these qualities, we ought not to be disappointed at finding them wanting. I shall say nothing of the prying, officious, intermeddling spirit which it betrays, because it has been the writer's infirmity and misfortune, whether at Kippen, or at Polmont, or at St. John's, Glasgow, or at St. Enoch's, Glasgow, or at the Old Parish, Greenock, to suffer, not

* *Supplementary Letter, by Patrick M'Farlan, D. D.* Minister of the Old Parish, Greenock, p. 32. I sincerely recommend this Encyclical Epistle to all, who wish to see the spirit and temper of the *Immoderates* most pleasingly delineated and amiably exemplified by a would-be leader of the party. Their logic and rhetoric, their fair-dealing and candour, their charity and patience, their honesty and truthfulness, are here pourtrayed to the life by one of themselves, in a manner to which the "*Records of Ribaldry*" furnish few parallels.

indeed "as a murderer, or a thief, or an evil-doer"—but as one whom an apostle* classes with them—an *allotrio-episcopos*, a bishop of other men's flocks, "a busy-body in other men's matters." I shall not dwell on the utter irrelevancy of his assertion, be it true or false, to the facts and arguments in my former Letters, with which he has not so much as sought to grapple,—because it is not in the man's nature to take a comprehensive, or philosophical grasp of any great question,—he can only nibble and fret away at some of its projecting corners. But this I will say, that until I have better evidence of the truth of the assertion, than the unsupported averment of Dr. Patrick M'Farlan, I shall treat it as a malicious and impudent fabrication,—a mean and despicable attempt—worthy of the quarter whence it emanates—to frighten other *quoad sacra* ministers from boldly speaking out their sentiments—to sow dissension among a hitherto united and peaceful congregation, and to excite among strangers prejudices against a man whom he finds it easier to rail at than to refute.

But, my friends, even were this assertion true to the extent alleged, you know me, and the people of Greenock know me too well, to suppose that it could have the slightest effect in inducing me to compromise or conceal my sincere convictions either of truth or duty. Such motives may weigh with men of little contracted souls, who measure the calibre of other consciences by their own, but with men of principle and honesty,—not the weight of a feather. I am not given to pay you court by flattery, yet there is extorted from me this admission to your honour, that though I am the minister of what is called a "Voluntary Church," you have never sought to make me feel my dependence. Since the first hour when I came among you, I have exercised, without let or hindrance, the right to form and promulgate my opinions on questions of public interest, with as much freedom as the most richly endowed bishop in Christendom. Let me add, that were the case otherwise, the minister would not be more degraded than his people. If any of you have *now* chosen to take offence at my using a privilege in reference to this unhappy Church controversy, which you know I have most fully conceded to *you*,—I mean the liberty to think for myself;—if any have left, or are resolving to leave my ministrations for those of a man whose opinions they hope to be allowed to mould at their own pleasure, I may regret the separation, both for my own sake, and for the sake of the proprietors of my Church; but as I have done nothing in this matter to deserve such treatment, so I have too much self-respect to do any thing with a view to prevent it. My humble purpose it is, through divine grace, to hold on the even tenor of my way in this business, fearless of present obloquy,—undismayed by future consequences. I thank my God, that he has given me a heart stout enough to endure in a good cause like this,—the cause of *honesty* and *truth*,—all that has been threatened, all that can be inflicted. If other ministers are proclaiming, that they mean to leave the Church of Scotland, whether their people follow them or not,—I proclaim, (and let there be no

* 1 Pet. iv. 15.

mistake,) that for all that has yet happened, and which, with prudent management may yet be remedied, I mean to remain in the Church of Scotland as a minister, if the Lord will; but if not a minister, as a member, whether you, my friends, remain in it or not. I am not insensible to existing abuses in the Establishment, but will the Schismatic Church, think you, with which we are threatened, be either pure, peaceable or perfect? On the contrary, you may rest assured, that should such a Church ever arise in this country, it will soon be the seat of wild, unbridled fanaticism, and of the most bigotted intolerance the world has yet seen; and the men who are now its most active promoters, will be the first victims. If you abandon the Church of your fathers in her present circumstances, you will commit the very error over which the pious Willison so deeply mourned in the case of the first Seceders—you will, in so far as your influence extends, be the means of perpetuating evils, which, had you continued within her pale, you might have been instrumental in removing. Whether then, my friends, you remain under my ministry or not, beware, I beseech you, of following any divisive courses from the national Church, "now so happily established," and which, with all its faults, real or supposed, has surely been a signal blessing to these sinful lands. For the Church of Christ I tremble not, but I do tremble for my country at the prospect of her venerable Establishment being undermined or overthrown; convinced as I am that such an event would be the heaviest blow the State has received for centuries—shaking the basis of the British throne, and removing one of the surest foundations of the British constitution.

*But the people of Scotland will not permit it.* They are with the Church and for the Church, and the revolutionists who are aiming at a dissolution of its connection with the State know this full well. They feel that the masses are against them; they have tried for years to rouse their sympathy, but tried in vain; they now fear that if schism there be, it will be a separation of themselves rather than of the people. Hence their anxiety to gain proselytes from every quarter, and especially from the congregations of those ministers who dare to resist their odious domination. Hence, with a view to "alienate" you from your own minister, they will court and coax and cajole you; they will try to poison your minds against him, both at their congregational meetings and in their private conversation, saying all manner of evil against him falsely. Did I say, they *will* do these things? Nay, they have done them, they are doing them at this moment,—"through covetousness, with feigned words, making merchandise of you." "Now I beseech you, brethren, mark them which cause divisions and offences, contrary to the doctrine which ye have learned; and avoid them. For they that are such serve not our Lord Jesus Christ, but their own belly; and by good words and fair speeches deceive the hearts of the simple."

I am, My Dear Friends, Your affectionate Pastor,

N. MORREN.

*Greenock, Jan. 2, 1843.*

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[No. VI.

# MY CHURCH POLITICS:

IN

# LETTERS TO MY PEOPLE.

BY THE REV. N. MORREN.

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## THE CLAIM OF CO-ORDINATE JURISDICTION.

My Dear Friends,

I trust I have now proved to the conviction of those of you who are open to conviction, that in certain matters both of doctrine and discipline, the Church of Scotland has, by the terms of her State-union, consented to allow her independence to be limited. With respect to all points of faith and of Church government embraced in her Confession, she formally acquiesced in such a limitation, so that in her character of the Established Church, she cannot alter them without the State's concurrence in the change. And yet a late writer who substantially admits the fact, at the same time maintains, that in this respect the Church is "absolutely free." "There is," says he, "no limitation of her prerogative, she has not consented to any."* To say that here *lurks* a fallacy, would be saying too much;—the fallacy is palpable to the eye of a child, and yet it is pre-eminently *the* fallacy which runs through the whole of the reasoning of our opponents. They cannot, or they will not, distinguish between the Church in its *general* character as a Church of Christ; and the Church in its *particular* character as the Established Church of Scotland. There are things which it might do in the former capacity, which it is not free to do in the latter, simply because its doing them would make it *ipso facto* lose that character altogether. It were a lamentable abuse of words,—arising from a still more lamentable confusion of ideas, to affirm, that a man when acting in a particular office, is absolutely free to do in that office any thing, the

* Dr. M'Farlan's Supplementary Letter, p. 20.

doing of which would lead to his forfeiture of the appointment. You will understand the distinction better, if you apply it not to the case of Christian Churches, but to the case of individual Christian ministers. The minister of a parish in Scotland may be free, *as a minister of Christ*, to go abroad and settle in the colonies, or to devote himself as a missionary to the heathen; but can he be said to be free to do so as *a parish minister?*—as the minister of the parish in which he has been placed? Certainly not;—for by his so acting, he would, as a Scottish parochial minister, cease to exist.

In like manner, the Church of Scotland is absolutely free to change her creed as a Church of Christ; but she is not absolutely free to do so as the Established Church of the country. She has in this respect consented to a limitation of her prerogative; and the only dispute which can now arise between her and the State, is not, as to what she might have done, or may yet do, as an independent Christian body, but as to what she is actually bound to do, so long as she wishes to remain in the position of the national Establishment.

Then as to the limitation of her independence in points of discipline, we said that looking at the State and the Church in the relation of the *employer* and the *employed*, and at the terms of the compact between them as embodied in acts of parliament—whenever an act is passed involving a certain condition, and the Church continues to discharge its public functions and receive its public endowments as heretofore—it is to be regarded as submitting to the terms proposed. We applied this to the question of patronage, but it is no less applicable to points of inferior moment,—the *principle* in all being the same. For example, an act of parliament, 1693, ordains, "that no person be admitted a minister within this Church (I beg you to mark the phrase—within *this* Church,) unless that he have first taken and subscribed the oath of allegiance." You say that such a proviso can never have been felt by the Presbyterian Church of Scotland as any hardship, because it has always been loyally affected towards the Protestant succession; but that is not the question here. A minister must take the oath, not because the Church permits it, but because the State commands it as a condition of his admission "into this Church." The Church might come to be of opinion, that the imposition of a civil obligation like that should not be at all mixed up with the sacred rite of ordination, or at least that the matter should be regulated exclusively by her own intrinsic power. And acting under the advice of those lawyers, who would persuade her to her ruin, that there is nothing she may not do if she thinks it within her own province, and right and fitting to be done,—she might pass an act dispensing with the oath of allegiance as a pre-requisite to ordination, and proceed to settle a man who had never taken or subscribed it. The usual concession would be made, that such a settlement, if challenged, would not stand good as to the temporalities of the benefice; but would it stand good in any sense as the settlement of a minister of *this* Church, thereby meaning the Established Church of Scotland? Could such a man, for instance, be a *legal* member* of any Church court?—Or, make the supposition

* I find this was one of the questions raised in the *Stewarton Case*; the mi-

that the Church, not venturing to alter its Confession of Faith, were to do as the Irish Presbyterian Church once did, viz., dispense with the subscription of its licentiates and ministers. That would be in the face of another proviso of the act 1693, and would no less vitiate the admission of any clergyman "within *this* Church." I might likewise refer to acts of parliament which have at various times been passed, regulating the plantation of kirks and erection of parishes, the appointment of days of fasting and thanksgiving, the praying for the royal family, &c.; but whoever wishes to see the amount of the concessions virtually made by the Church in these matters, has only to consult the Testimony of those who call themselves the *Reformed* Presbytery, but are called by others "Cameronians." He will also see what *they* deem Erastianism. In a controversy like the present, in which every flippant sciolist thinks he shuts your mouth by calling you "an Erastian," it is amusing enough to see the very same empty and unmeaning term of reproach applied to himself by others, who deem themselves the only men of wisdom and purity in the kingdom. Nothing is easier than to call bad names, or names which are meant to be bad; but under the disgrace of being stigmatised as an Erastian, it is some comfort to know, that that is the very epithet—the *phrase consacrée*—which various sects have long been in the habit of employing with equal justice and truth in speaking of the Church of Scotland.—But the New Schismatic Church is to glory in being the NON-ERASTIAN.* Of course, practically it will be so, for the best of all reasons, viz., that being purely a Voluntary Church, it cannot well be otherwise. But so long as its promoters adhere to the great Presbyterian charter of 1592, and the great Revolution Settlement of 1690, so long will they be branded as Erastians by their own paid agent and master of all work, Mr. Charles Leckie,—for the body to which he belongs pronounce both these muniments of the Establishment to be rank Erastianism.

But without dwelling longer on these lesser points, it is evident beyond all controversy, that the Church's independent jurisdiction is self-restrained as to the mode of appointing to vacant livings—the arrangement of the *initiative* is placed beyond her reach. And how is this stubborn fact met by those persons, who claim for her independence unlimited, and jurisdiction uncontrolled? Why, those of them whom my friend, Dr. Duncan, (now Jewish missionary at Pesth,) happily termed, "Pro-patronage non-intrusionists," gravely maintain that the initiative nomination of a minister does not belong to the province of spiritual jurisdiction at all. One of them at least has lately promulgated the sentiment, that "the selecting of the person who is to receive the temporalities of a parish is a civil

nister of the *quoad sacra* parish, having been an Old Light Burgher, had not qualified to Government.

* As to their calling themselves still the "Church of Scotland," there will be in that nothing new. We have long had "the (now suffering) Church of Scotland" among the Episcopalians, and the (Reformed) Church of Scotland among the Cameronians—who claim to be the only representatives of the men of 1638—a claim, however, which is contested by the "Original Seceders."

matter;"*—aye, but is the selecting of the person who is to receive the *spiritual cure*—is that a *civil* matter also? Is it a civil matter among the Dissenters? would it have been a civil matter had the Church been unconnected with the State? will it be a civil matter in the new Secession which is "sooner or later" to take place? What say the anti-patronage men to this extraordinary principle? However inconsistent and disreputable I think their conduct, in eating the bread of what they deem a sinfully Erastian Church, they are at least so far consistent in their principles, that they regard the regulation of the initiative in the filling up of vacancies as a spiritual matter, pertaining to the Church's inherent jurisdiction. Now, it is a historical fact, which cannot be controverted, that the Scottish Church was, from the very commencement of her existence as a National Establishment, self-restrained as to this point—a point which most certainly, in all churches independent of the State, is a matter not of civil, but ecclesiastical jurisdiction. It was regulated by the State in favour of patrons in 1567, and again in 1592; it was regulated by the State in favour of heritors and elders in 1690, and again in favour of patrons in 1711: so that with the exception of ten or twelve years intervening between 1649 and 1660, (when it was in the hands of the Church, and was by her placed not in the people but in the kirk-sessions,) this matter has been settled by the State during the whole period of the Church's history.

But how, the question again recurs, has the Church tolerated such an interference, but upon the very principle which in my two last letters I have been endeavouring to develope, viz., that she submitted to this limitation of her jurisdiction, because, regarding the matter as a *non-essential* in the arrangements of her polity, she conscientiously believed, that by retaining her State-connection, though at this sacrifice, she would more effectually promote and secure the great ends of her institution. It cannot then be too often repeated, that notwithstanding the great outcry made about spiritual independence and spiritual jurisdiction, the principle of a voluntary limitation in both (be it right or wrong) is practically admitted by any Church that exists under the law of patronage; and any question therefore, on that head which can arise in such a Church, can have respect only to the *degree* to which it will allow its independent jurisdiction to be limited—the *principle* of the limitation being already conceded.

To this reasoning, various answers will be given, not very consistent with each other. Some will admit that the Church is bound to the patron's initiative, but has a constitutional right to insist upon the concurrence of the people either express or implied, as an element in the nomination, or (what really amounts to the same thing) as a qualification in the presentee. Others will affirm, that the Church is not civilly bound to do any thing at all in the matter—that if obligation there be, it is purely moral, (*i. e.* she is only bound to do what she herself thinks she *is* bound to do, but no more,) or that if other-

* Dr. M'Farlan's Supplementary Letter, p. 20.

wise bound, she can at once get rid of the obligation by giving up the benefice to the patron, whenever she resolves, for any reason, not to receive and admit his presentee to the cure.

Now, all these are points, the solution of which simply depends upon the question, as to who are the authorized interpreters of the acts of parliament, where the obligation to receive and admit a qualified presentee, is expressly imposed. This is the subject of our fourth proposition, viz. "*That when a question arises between the Church and the State, as to how far the independence of the former is limited by law, the decision of the point cannot rest with either of the two parties. As it does not on the one hand lie with the State, nor with those who claim to have received from the State certain civil rights, which they allege the Church is by the terms of her union 'bound and astricted' to enforce; so neither on the other hand does it rest with the Church herself. It must of necessity lie with a third party independent of either; and as the terms of the union are contained only in 'acts of parliament,' it follows, that the final authoritative decision of all questions that arise as to the import of these acts, must rest with the Supreme Civil Tribunal of the country, to whom the legal interpretation of its constitution in Church and State exclusively belongs.*"

The point which this proposition embraces, may be called the *turning point* of the whole controversy. It is therefore of great consequence that you give it your close and anxious attention, and I shall endeavour to open up my views of it in as short and simple a manner as the nature of the subject will admit.

Here is the act of Queen Anne restoring patronages; and two questions have been raised regarding it. The *first*,—is it an act which is binding? Is it *law*, or is it not *law*? And, *secondly*, if it be binding as law, Who are by the constitution of the country its authorised interpreters?

Now, as to the former question, though the illegality of the act of Queen Anne is a favourite topic of declamation at popular meetings, yet the Church herself has never taken up that ground either in theory or practice. When the act first passed, she did, indeed, loudly protest against it as contrary both to the Revolution settlement and the treaty of union; but she never once pretended that it was not *law*.* On the contrary, though she continued to send up an

* It appears from *Wodrow's Correspondence*, (vol. I.) lately published, that presentations were acted upon, much sooner than is commonly supposed. There was the case of Mr. Robe of Kilsyth, (p. 384,) and of a minister in the Presbytery of St. Andrew's, (p. 380, Note,) both in the year 1712. Wodrow himself, though a determined enemy to patronage, admits, (p. 356,) that "allegiance does involve ministers in an active subjection to the laws anent patronage; for (says he) I reckon allegiance obliges every subject to execute, or actively to submit to the laws relative to his office in a very particular way." It is true that his own conduct (p. 381, Note) was not very consistent with this, but probably he had not taken the oath of allegiance, as we know he refused the oath of abjuration. He says, "I take calls drawn after presentations to be mock calls, and to have nothing of a real but a forced consent in them, being that they cannot have another than he that is presented." This was also the idea

annual remonstrance against it for more than seventy years, that remonstrance was based on the fact that it *was* law, for had it not been law, it could have been no grievance. The whole course of her procedure ever since, down to the present day, has shown, that she never called in question the binding nature of that act as law, whatever might be her opinion of the measure itself, or of the policy which led to its adoption. It is true that the interpretation recently put upon it by the civil court has not been satisfactory to the Church; but you must bear in mind, that her opinion of the interpretation given of the act, has nothing whatever to do with the only question now before us, viz., the legality or illegality of the act itself. She may complain of the interpretation as in her view incorrect and unconstitutional, but that very complaint proves that she does hold the act itself to be a valid, legal deed, which must be expounded like all similar documents by the law's authorised interpreters. But the truth is, that were she to take up different ground, and to maintain as do some of her more violent partizans, that the act of Queen Anne is in no sense *law*, we should only be the sooner brought to the discussion of the second question above stated, viz., Who are the law's interpreters?—for it is manifest that to *their* office it belongs, not only to declare what is the meaning of a statute, but also to dispose of the previous inquiry, as to what statutes have, or have not the force of law.

The great question then presents itself: "In whom has the constitution of this country vested the *final* and *authoritative* interpretation of its written laws?" In the first instance, no doubt, every man is left to interpret the law for himself, in doing which he may, if he please, seek the assistance of those who have made it their professional study. But no mere "opinion of counsel," however eminent or experienced, has the slightest force in ruling what the law *is*. That must always remain with those whom we have called the "final and authoritative interpreters," for it is their judgment alone that can bind to obedience.

Let us apply the question to the case which has arisen between the Church and the State, or, to speak more correctly, between the Church on the one hand, and a patron and presentee on the other, who claim to have received from the State, by act of parliament, certain civil rights, which they allege, by the terms of that act, the Church is "bound and obliged" to enforce. What says the Church? Why, she says: "We acknowledge that the act is binding on us so far, and we therefore sustain your presentation; but we maintain at the same time that it is only a *qualified* presentee we are bound to admit. We claim from other acts of parliament the uncontrollable power of defining what *are* qualifications in a presentee; and in the exercise of this power, we insist upon his having, as one preliminary and indispensable qualification, the concurrence of the people in his appointment, either tacit or express—the more especially as this is

of his correspondent Wylie of Hamilton, who says, (p. 323, Note,) that such a call is but a juggle; adding, "*I wish there had not been too much occasion for the reproach of Jesuitism.*"

a check upon patronage, which we hold to be recognised by the law of the country." To this the patron and presentee reply: "We do not call in question your right to test the real, *bona fide*, personal qualifications of the presentee; but by your summary rejection of him, without taking him on trials at all, and simply on account of the people's dissent from his appointment, though without reasons—you are attaching to the word 'qualification' a meaning which it can no more be made to bear in reason, than it ever was designed to bear in law;—you are putting upon the technical term 'qualified,' in the act of parliament, a sense which is perfectly new and altogether unauthorised. What you call a 'qualification' in the presentee is in reality an element in the nomination, which is already complete without it;—it is a direct infringement of the patron's right, and an unprecedented encroachment on the presentee's title, which the law has no where sanctioned;—and we therefore call upon you, in terms of the act of parliament, as rightly interpreted, to take the presentee upon trials, with a view to ascertain whether he is qualified or not, and, if qualified, to admit and receive him to the benefice and cure."

Here, then, the parties join issue:—and who is to decide between them? By whom is the law to be authoritatively declared? The patron and presentee appeal to the *civil* court, believing it to be the constitutional expounder of statute law, at least in a matter involving their *civil* rights. And how does the Church meet that appeal? Does she pretend to exclude the jurisdiction of the civil court altogether? So far from that, that she appears at its bar as a party—fully acknowledging its right to give its authoritative exposition of the law, but claiming, at the same time, to give another and independent exposition of her own, which, though diametrically the reverse of the decision of the civil courts, she maintains to be of equal authority with theirs, as the declared law of the country.

This is the claim that is commonly known by the name of "Co-ordinate Jurisdiction"—a claim which, if it be well founded, does certainly present as extraordinary a state of things as can well be conceived of in a civilized country. You can imagine two different tribunals coming indirectly into collision from the clashing together of some of the collateral and remote *consequences* of their respective procedure; but that is not the case here. The two courts are supposed to be in the direct and immediate exercise of their radical functions, as interpreters of the *self-same statute;* and they give forth completely opposite interpretations of it, both of which, however, it is alleged, are equally legal—both equally authoritative—both equally binding upon all the parties, and especially on the party for whose guidance and governance the statute was specially enacted. For if the interpretation of one of the courts be less binding than that of the other, then there is an end to the idea of their co-ordination—the jurisdiction of the one would then override that of the other. See the bearing of this on the astricting clause in the patronage act. The supreme *Civil* court says: "The word 'qualified' has no reference whatever to the approbation of the parish,

and we therefore find the Presbytery is bound to take the presentee on trials, to ascertain whether he is qualified or not." The supreme *Church* court, on the other hand, says: "The word 'qualified' *has* reference to the approbation of the parish, and we therefore find that the Presbytery is bound not to take the presentee on trials, seeing the parish has rejected him." Now, my friends, I hope none of you are so far left to yourselves, as to imagine, that an act of parliament can have more *true* meanings than one;—your common sense tells you that one or other of these opposite decisions must be false and erroneous;—and yet we are gravely assured, that they both stand upon precisely the same footing in point of law;—that the State's subjects (for whom alone acts of parliament are made) are equally bound to obey both decisions, and consequently are liable to punishment for their disobedience to either.

In the course of this controversy, ingenious illustrations have been adduced, of *possible* collisions taking place between a court civil and a court fiscal or criminal. But to make any example parallel to the present, we must suppose the difference between them to arise from their attaching opposite senses to a particular clause in an act of parliament, *which it lay within the province of each of them to interpret.* Has such a case ever arisen?—Can it well arise in the jurisprudence of this country? Was it ever believed or maintained by any sound-headed lawyer in any country, that the same statute can have two or more legal and authoritative significations—however inconsistent with or contradictory to each other? There are acts of parliament relating to the revenue, and of these the fiscal court is the sole interpreter. There are acts relating to crime, and of these the criminal court is the sole interpreter. There are no acts of parliament *purely* ecclesiastical; but there are doubtless some which, from having an ecclesiastical bearing, may be styled ecclesiastico-civil, and the interpretation of these must be either with the church court or the civil; but to say that it lies or can lie with both, is one of the strangest fancies that ever entered into the mind of man. Can the act of Queen Anne really have two legal meanings, a civil and a spiritual? What would you think, were it said of other acts of parliament, that they also have two valid, legal meanings—not the less obligatory because they are contradictory—say a civil and a fiscal sense, or a civil and a criminal sense? Or to go back to former days (before the courts were suppressed,) a civil and a commissary-court sense, or a civil and an admiralty-court sense? Now you will observe, that unless the civil court had a right to put its own meaning on the Patronage act, it had no right to interfere in the matter at all; and yet the Church allows its right to interfere to be as good as her own.

Let us, however, make the supposition that the theory above stated is correct, and let us see how it will work in practice. Here are two Presbyteries, Auchterarder and Strathbogie, in each of which a case of the Veto occurs: and as Presbyteries are expressly named in the act, as the party who are *bound* and *astricted* to obey it, they were naturally anxious to be guided aright in the interpretation of

the statute. The former adopts the interpretation of the supreme Church court, and rejects the presentee. The latter adopts the interpretation of the supreme civil court, (which the Church acknowledges to be equally *law*,) and takes the presentee on trials. "Oh! but," say the Church's advocates, "they did wrong, for in so doing they acted in opposition to their ecclesiastical superiors." But pray, did the other Presbytery do no wrong when acting in opposition to their civil superiors? Or does it turn out, that though the Church began with seeming to admit that the interpretation of the civil court is as binding in law as her own, (for if not binding in law—it is so much waste paper)—yet all that she practically admits is, that it is binding only in so far as *she* will allow it to be binding, for she prohibits Presbyteries, under pain of her severest censures, from carrying it into execution. She may allege, that whenever she forbids a Presbytery to give effect to the judgment of the civil court in this matter, she instructs them at the same time to abandon the benefice to the patron; but what is that but a complete shifting of her ground as to co-ordinate jurisdiction, and insisting that her own interpretation of the astricting clause shall *alone* be held to be law, to the exclusion of that of the civil court? For you must recollect that the question which was at issue between them, was not, "What is to happen in the event of a Presbytery refusing to admit?" But it was, "Is this a case in which they are bound to take on trial with a view to admission?" The civil court says, "they *are* bound;" the Church says, "they are *not* bound," (or rather, "they are bound *not*")—so we have here two self-contradictory obligations—compliance with both of which is a palpable impossibility, for "no man can serve two masters." The *law* itself is one thing, and the *penalty* for breaking it is quite another, and let not the two things be confounded in the argument. Yet, according to the Church, there is a marvellous difference in the penalties by which these impracticable obligations are respectively enforced. She says to her Presbyteries: "Pay no regard to the civil law in this matter—you can do so without incurring any personal risk—you at once get quit of *that* "binding obligation" by not fulfilling it;—but disregard our law, and we depose you," Now, by thus preventing effect from being given to the interpretation of the civil court, (which she allows to be equally legal with her own,) the Church places herself in reality above that court; and the pretence of seeking only co-ordinate jurisdiction is a mere mockery, for how can two courts be regarded as co-ordinate, if the decision of the one *must* be obeyed, and that of the other set at defiance with impunity?

It is perfectly true, that though the Church had pursued a different course, and instead of coercing Presbyteries, had left them to judge for themselves as to which of the two *legal* interpretations they would adopt, consequences would have followed no less unseemly, inasmuch as the uniformity of discipline and order within the Church would have been completely destroyed. But this very consideration, (viz., the confusion and anarchy in which in any case it must end,) may serve to shake our faith in the notion of co-ordi-

nate jurisdiction altogether, at least in reference to the interpretation of statute law by the Church courts. There are other considerations which I have now to bring before you, which are fitted to show that it is very unlikely that such a power could ever have been vested in those bodies by the State; and that in point of fact it never was conceded to them, nor claimed by them, at any former period of our Church's history.

1st. *The Church herself is here a party.* It is very important to fix this in your minds. Many people have taken up the idea, that it is entirely a contest between the Church on the one hand, and the court of session on the other. But though these two bodies have unfortunately come into collision in the course of the dispute, the real parties ultimately at issue are the Church and the State. The question then arises: Who is to be the judge between them? Some persons say, there can be no arbiter unless one mutually chosen, because the Church and State are in the relative position of two independent kingdoms, that cannot submit their differences to any ordinary tribunal.

With the pretensions now put forward of illimitable independence and uncontrollable jurisdiction, it is difficult to perceive where any such arbiter is to be found, or how such claims can be submitted to arbitration at all.* But let it not be forgotten, that from the manner in which the compact between the Church and the State has been drawn up, and the nature of the documents in which it is embodied, there is already an implied submission to arbitration on the part of both. When two nations enter into a treaty, it runs in the name of both; and in the event of an irreconcilable difference as to its meaning, and of no compromise being effected, they must appeal either to arbitration or to arms. But as I showed you in my last letter, the union between the State and the Church has been formed in quite a different way. The State is, ostensibly at least, the only active mover in the work of drawing up the contract—the Church being entirely passive. The State, as the *employer*, engrosses the terms of the union *in its own acts*—acts of parliament, (for nowhere else are they to be found,) and the Church, by her performance of the duties required, and her reception of the endowments provided, tacitly intimates her consent to the conditions stipulated for in those acts of the State which regulate the compact between them.

But when a difference arises as to the import of these acts, who is to be the authoritative interpreter? The Church seems at first to acknowledge, that in a certain sense, and to a certain extent, it is the *civil* court; the matter in dispute being neither *fiscal* nor *criminal*. But as we have seen above, (with respect to the patronage act,) she does not really allow the interpretation of the civil court to be *binding* in law, for she will not permit her Presbyteries to give effect to it, and yet they are the only parties whom the act itself takes bound

* Some of the "reasonable time" Convocationists are proposing a royal or parliamentary commission of inquiry. But will they and their brethren bind themselves to acquiesce in its report?

to put it in force. In point of fact, she herself *practically* claims to be its sole interpreter, in so far as the interpretation of it is to guide in the discharge of the only statutory duty which the act has imposed.

Now, in reference to this claim I remark, 2dly. *No party can be allowed to act as judge in its own cause.* As the parties finally at issue are the Church and the State, neither of them ought to pretend to be an authoritative interpreter of the compact between them; and as the State does not seek such a power, so neither ought the Church. This stands to reason and common sense, and you instinctively feel that the opposite principle is repugnant to every sentiment of justice. No man can be a proper judge in his own quarrel, and that for the best of reasons, because he cannot be expected to judge impartially; and if it be a contest for *power*, there is a certainty of his grasping at more than is his due. If the Church has the prerogative of interpreting the compact on the one hand, so must the State on the other, —for if not, they could not be regarded as on a footing of equality. But the State aims at no such usurpation of the office of judge; she submits her own acts which contain the agreement to a third party independent of both, and so do the patron and presentee, in whom, by the terms of the agreement, the State has vested certain municipal rights. You would have thought it an unfair and unwarrantable assumption, had these parties in the Auchterarder case claimed a jurisdiction to decide the law for themselves—you would even have thought it a strange and unheard-of procedure, had the State, (*i. e.* the Queen and Parliament in their legislative capacity,) taken it upon them *judicially* to interpret their own engagements to the Church. But not less strange or unreasonable is it for the Church to pretend to interpret judicially her engagements to the State. There is a power in the country, which, in the interpretation of statute law, is superior to either party—I mean the judges of the land. The Commons of England, have, before now, had to sist themselves at their bar. The crown itself has to appear there, and is not degraded, but honoured, by pleading there like the meanest of its subjects; for while it is true, that all judicial authority emanated from the crown in the first instance, it has now passed out of it into the appointed channels of its courts.

It is often said, that the claims of the Church are of a character so peculiarly sacred—being divine in their origin, and spiritual in their exercise—that she is not at liberty to submit them to the arbitration of any, far less to the judgment of a secular tribunal. But here comes up again the old Proteus-like fallacy, which assumes a thousand different shapes, and meets us at every turn. It is taken for granted, that the point adjudicated upon is, "What ought to be the prerogatives of a Church of Christ?"—whereas the only point at issue is, "What are the prerogatives *secured by law* to the Established Church of Scotland? how far is its independence limited by statute?" and the question, when thus correctly put, is clearly brought within the province of the civil law, seeing it relates exclusively to the statutory conditions of the *civil* esta-

blishment *of* religion. So far is there from being any good reason why the Church should seek for an undue advantage or superiority over the other party (the State) in the exposition of the compact between them, that she, above all other bodies in the country, owes it to her character not to seem to demand, in a matter like this, a power, which in any covenant-transaction between man and man, would be held to be subversive of the eternal principles of justice.

I remark, 3dly, *That the office of interpreting statute-law is inconsistent with the spiritual character and sacred functions of a Church of Christ, and one, moreover, for the right discharge of which the education and habits of its office-bearers do not qualify them.* Many things have of late years been spoken and written on the secularizing effects of a national Establishment on the character of its clergy; but I know nothing which would have a more pernicious influence in this respect, than their exercising any of the duties of a secular judge. Our Presbyterian prejudices revolt at the idea of clergymen in England being in the commission of the peace, and yet the claim of co-ordinate jurisdiction would make all our ministers not merely justices of the *quorum*, but judges on the bench. You say they are only judges of ecclesiastical laws; but what are all acts of Parliament, but the civil acts of a civil body? The idea of there being certain acts of Parliament which are purely *spiritual* or *ecclesiastical*, and therefore subject to the interpretation of the Church courts, is wholly groundless. There are fiscal and criminal acts, of which the courts of exchequer and justiciary (with other inferior tribunals) are the appointed expounders, but all these are in reality *secular* matters, as distinguished from things sacred. The legislature of the country being itself entirely of a secular character,* (for even the bishops sit not as clergymen, but as peers,) cannot, strictly speaking, enact spiritual laws; but it does embody in its acts, a statement of the limitation it would impose on the Church's independence; and of the meaning and extent of that limitation, not the Church courts, but the civil courts are the exclusive judges, for it is a limitation made in favour of civil rights. Though there are no acts of Parliament purely ecclesiastical, there are many that have a close bearing upon religion and religious interests: but will it be affirmed, that the Established Church in Scotland is vested with authority to interpret within Scotland all or any of them? The acts, for example, relating to Sabbath profanation, to blasphemy and

* It is a curious fact, that at the very time the Presbyterian clergy in the reign of James VI. were most zealous against bishops, they demanded of the king the privilege of electing a body of commissioners to represent them in Parliament. The king's reply is very characteristic: "I can nocht aneuche wonder whar yie fund that rewll or example, ather in God's word or anie reformed Kirk, that sum ministers, be commission of the rest, aught to be ane of the Esteates in Parliament! Weill, God purge your sprits from ambition and uther indecent affectiones for your calling, and giff you grace to teatche in all humilitie and simplicitie, his Word and veritie!"—*Autobiography of Mr. James Melvil*, (a recent publication of the Wodrow Club,) p. 240.

profaneness, to the toleration of dissenters, &c., may be called *ecclesiastical* acts, just as much as the patronage law; but the Church has never arrogated to herself the power to expound or apply statutes like these. Indeed, the only acts ecclesiastical, of which she professes to be the interpreter, are those which she is the least likely to interpret impartially—I mean those which define her own constitutional prerogatives, and prescribe her own statutory duties.

But another question here suggests itself: "Are the office-bearers of the Church *qualified* to discharge this important duty of acting as the law's authorised interpreters?" They may be fit judges of what the law ought to be, and yet very incompetent for ascertaining correctly what the law is. That is one of the most difficult and responsible functions which the State can commit to any of its subjects, and hence, it is everywhere made the business of an order of men, who bring to its discharge the matured experience of professional study and long practice. But to these qualifications the office-bearers of the Church, are, generally speaking, entire strangers; and the objections which have been made to an unpaid and unprofessional magistracy, on account of their frequent mistakes in law, would apply to them with tenfold force.

Recollect too the circumstances under which they, for the first time in the history of their Church, advanced the claim to interpret the State's laws for themselves, and resolved to set up their own interpretation in opposition to that of the civil court. It was done amid all the party agitation of an excited General Assembly—a body, which from its numbers, its popular constitution, and the very short period during which it meets, is the worst fitted for acting in a deliberative judicial capacity on a question of this nature that can well be conceived.

Contrast the different manner in which the great questions at issue were disposed of in the ecclesiastical and in the civil court. The judges who guided the decision of the House of Lords in the first Auchterarder case, after an elaborate argument of five days, (to say nothing of the still longer argument in the court below,) and after the lapse of several weeks for mature deliberation, at last gave their solemn judgment on the 3d May, 1839. *In less than three weeks thereafter*, (viz., on the 22d of the same month,) the General Assembly, without any communication with Presbyteries, came, after a few hours debate, to a decision substantially the reverse, though it was evident that the question thus summarily disposed of, was one that might involve the Church's existence as a national establishment. I have said the decision was only substantially the reverse, for it is a remarkable circumstance, that neither in the resolution of the Assembly, 1838, nor in that of the Assembly, 1839, relating to this matter, is there any *express* affirmation either of the co-ordinate jurisdiction of the Church in the interpretation of the statutes under which she exists as an Establishment, or of the correctness of her own interpretation of the Act of Queen Anne, as opposed to that of the civil court. These Assemblies claimed, indeed, exclusive spiritual jurisdiction, but they did not venture to say that they were the constitutional

judges of the question, as to whether it may not have been limited by act of parliament. They re-asserted the principle of non-intrusion as a principle of *their Church*; but they carefully avoided the inquiry as to who is to decide whether it is a principle recognized *by the State*. And yet these are the real points at issue:—not what the Church *thinks* she should have—not what the Church *says* she has; but, "What has in point of fact been granted to her by another party," of the nature of whose intentions towards her, and the amount of whose concessions in her favour, she constitutes herself the exclusive judge.

Nor is it less worthy of remark, that whatever may be the demands now made, and the pretensions now put forth in name of the Church —it is only in General Assemblies (and of late years, *systematically packed* General Assemblies) they have ever been advanced. Some of the most extravagant and inadmissible of these claims have not even had the sanction of a packed Assembly, but are the *gratis dicta* of a few individuals in Edinburgh, who oracularly declare in their communications to the government, that the "Church considers," and "the Church feels," and "the Church holds" this thing, and "the Church has resolved" to do that other thing; whereas the Church as a body, (meaning by that a majority of its Presbyteries and people,) has never once been consulted on the subject. You are aware, that to obviate the dangers of crude and hasty legislation by a body like the General Assembly, the Barrier Act was passed; and if, according to its provisions, no permanent law, however trifling, can be enacted without the consent of a majority of Presbyteries—surely before committing the Church to a conflict with the State, in order to the recognition of claims like those we are now considering, it might have been expected that the Church's leaders, not content with the support of a partizan Assembly, would have left it to every Presbytery, yea, to every Kirk-session in the Church, to deliberate on the matter with all the grave and leisurely reflection which a topic so momentous demands. But they rushed into the contest with a kind of reckless desperation—hurrying their followers into the thickest of the fight, without giving them time to look calmly at their real position; and it is only now that some of them begin to open their eyes too late to a perception of the direful consequences of so much blind precipitancy, misdirected enthusiasm, and ignorant, unprofitable zeal.

I go on to remark, 4thly, *That the right to be the expounders of a country's laws, forms no part of the jurisdiction which a Church of Christ has received from its King and Head.* It is often alleged by the Church's advocates, that they ask nothing more for her in the way of jurisdiction, than what is assigned to her in the New Testament; than what is enjoyed by every Dissenting Church in the country; than what she herself possessed before her connection with the State at all, and which she does inherently and inalienably possess, whether established by the State or not. Here, my friends, is the old fallacy again turning up in a new form: and we find it re-

peated so recently as in the *Minute of the Special Commission*, published the other day in answer to the reply of the Government to the Church's demands. "The four great branches of jurisdiction (says that paper) the civil, the criminal, the fiscal, and the ecclesiastical, belong to separate supreme tribunals independent of each other; the first three branches *conferred*, the fourth *ratified* by the State; and the appellate jurisdiction of the House of Lords extending only over two, the civil and fiscal." Now I beg you to attend carefully to the wording of this sentence, for the *italics* are not mine, but those of the original document. What is the jurisdiction then, that is here said to be *conferred* upon the courts, civil, criminal and fiscal by the State? Is it not just the authority to expound the State's laws within their respective departments? And must it not therefore, be the same kind of jurisdiction which is here also ascribed to the courts ecclesiastical? and yet it is maintained, that upon them this jurisdiction was not *conferred* by the State at all, but only *ratified* because they already possessed it. What! will any man in his senses affirm, that before the Establishment of the Presbyterian Church by the State in Scotland, her courts possessed any power to interpret any of the State's laws in any sense whatever? Will any man tell me, that either the Bible or the Confession of Faith, or the Books of Discipline, or any book that ever was written, or any Church that ever existed, has promulgated the monstrous doctrine, that the right to interpret a country's laws is an inherent prerogative of the Church of Christ?

The case is not the least altered by confining the claim to what may be termed the *ecclesiastical* laws of a State. Be they what they may, they are still laws made by the State itself, and the right to expound them can only be conferred by its authority. When establishing the Presbyterian Church in this country the State may have amply ratified all the jurisdiction it possessed, but it could not well *ratify* what did not *exist*. The courts of the Church were in fact in no sense the *courts of the country* at all, until erected as such by the State. If they then obtained jurisdiction of any kind in the interpretation of the State's laws, it was a jurisdiction not of Divine but of human origin,—consequently not inherent in the Church,—for the same body which is supposed to have conferred it, can resume it, and where is it then? The truth is, that in the whole of this controversy, there has been a sad confusion in the use or rather abuse of this word *jurisdiction*. The authority to interpret statute law, is no part of *spiritual* jurisdiction at all. By whomsoever enjoyed it is a jurisdiction really civil,—temporal in its source (the State,) and temporal too in its objects, which being the matter of *civil* enactment, cannot in the nature of things be purely *spiritual*. The Church of Scotland was in the enjoyment of more real spiritual jurisdiction than is exercised by any State Establishment in Christendom, when unfortunately, in consequence of an act which was exclusively her own,—the question was raised as to whether she had not exceeded her constitutional limits both in a legislative and judicial capacity. And when in an evil hour, her leaders asserted

for her the right to decide that question for herself, without arbitration and without appeal; they then, under the plea of seeking for her nothing but spiritual jurisdiction, really claimed a jurisdiction which is essentially civil,—for it relates, not to the exercise of her functions as a Church of Christ, but to her right to expound the acts of a civil body, the British Parliament, and the conditions of her own civil existence as a National Establishment.

But as the right to interpret any of a country's laws forms no part of the inherent jurisdiction of a Church of Christ, so I observe, *fifthly, that the power to interpret authoritatively any of the laws of Scotland, is a power that never was conferred by the State on the Scottish Church.* But the illustration of this, as well of a concluding remark, (viz., "*That the final, authoritative interpretation of all acts of parliament not relating to crime, belongs exclusively to the Supreme Civil Court,*")—must be reserved to a future Letter.

I must once more beg of you to form an accurate conception of the only matter which is at present before us. Am I seeking to prove that *whatever* the civil court may tell the Church to do, the Church is bound to do it, merely because the civil court bids her? No such thing. I have all along been speaking of nothing but what has been enacted by *statute*, and of the judicial authority which resides in the civil court to interpret the statute. *Beyond that I affirm nothing.* If the court of session assume power over the Church, for the exercise of which it cannot plead statute, and does not pretend to plead it;—or if, under colour of expounding a statute, it interfere in matters respecting which the statute is entirely silent —these are not the cases we are now considering. But, on the other hand, if a statute there be on any given point in dispute, and the civil court have declared its legal import, I do hold the conduct of the Church to be quite unjustifiable, in pretending to have authority to compel its presbyteries to act upon a different interpretation from what has been promulgated by the only competent court. It was the assertion of this power, which at the outset of the controversy conjured up against her a host of enemies; it is her unaccountable pertinacity in still maintaining it, by keeping up her illegal and inoperative Veto act, that deprives her of the support of all parties in the State, and of the sympathy of the millions of the united kingdom; and it is the firm conviction of all but her own blind partizans, that if ever she is to emerge out of her increasing embarrassments, *the first step must be taken by herself*,—by her honourably receding from a position which she ought never to have taken up, and from ground which she must now feel is crumbling from beneath her feet.

I am, My Dear Friends, Your affectionate pastor,

N. MORREN.

*Greenock, Jan. 25, 1843.*

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# MY CHURCH POLITICS:

IN

## LETTERS TO MY PEOPLE.

BY THE REV. N. MORREN.

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### ACTS OF PARLIAMENT.—THE VETO.—CONCLUSION.

My Dear Friends,

In discussing the much-mooted question of Co-ordinate Jurisdiction, I hope I have established to your satisfaction the four following positions. 1st, That in the interpretation of the compact between the Church and State (which is contained in acts of Parliament), the Church is herself a party. 2nd, That no party can be allowed to act as judge in its own cause. 3rd, That the office of interpreting statute law is inconsistent with the spiritual character and sacred functions of a Church of Christ, and one, moreover, for the proper discharge of which the education and habits of its office-bearers do not qualify them. And 4th, That the right to be expounder of a country's laws forms no part of the jurisdiction which the Church of Christ has received from its King and Head.

I now remark 5thly, *That the power to interpret authoritatively any of the laws of Scotland is a privilege that never was conferred by the State on the Scottish Church.* If such a power is vested in the Church, it must either be resident in it inherently by divine right, or have been bestowed upon it by the State by act of Parliament. We have seen that it is a power which no Church possesses inherently—for if so, it would belong not only to the Church of Scotland, but to the office-bearers of every other true Church in the country; and if therefore it has been granted to any Church by the State, it must have been in the way of original investiture, and not in the way of recognising and ratifying what had no previous existence, and what moreover is foreign to the spiritual nature and sacred functions of a Christian Church.

The question then now becomes reduced to a very narrow compass, being simply this, "When and where did the State make over to the courts of the Presbyterian Church the power to act in any sense as the final, supreme judges of its laws?" We have shown from the various considerations already adduced, that it is not likely that any State would vest so important a trust in a body of men who have never made its laws their study; far less is it likely, that the State would exclude itself, as it does, from the right of interpreting its compact with the Church, and yet concede that right to the other contracting party. And while we acknowledge that such a power may have been given, we are entitled to expect that the terms in which it is conveyed, shall be so clear and unambiguous as to admit of no doubt as to their import. It is a frequent but groundless complaint on the part of the advocates of Church prerogative, that their opponents will never consider the acts of Parliament on which they base its pretensions. Now that there may be no room for any such complaint here, I shall take up in chronological order, and shortly dispose of every act which has the remotest bearing upon the subject—including all that have been founded on in a manner so elaborate, but, as appears to me, so sophistical and unsatisfactory, in the Assembly's "Claim of Right"—as well as in the recent "Minute of the Special Commission."

The Presbyterian clergy, in the course of their struggles for power in the reign of James VI., did sometimes base their demands on those acts of Parliament which had been passed in favour of the *Romish* clergy in the days of Popery. Thus in the "Apology" by James Melville (nephew of Andrew Melville) for the ministers whom the king had in a very arbitrary manner imprisoned in Blackness Castle, reference is made to various ancient acts for securing the "privileges and freedoms of the holy Kirk and spiritual persons;" and it is added: "Iff ony will object that this wes granted to the Papisticall Kirk, the answer is easie and strong—far mair to the trew Refformeit Kirk of Chryst Jesus."* The claimants of Church power in the present day have not ventured on that ground as yet, and therefore we confine ourselves to those acts of the State which were passed exclusively in favour of the Church as presently established.

Now the very *first* act of Parliament relating to the Reformed Church was that dated 8th July, 1560, ratifying what is known as the old Scotch Confession of Faith. And that Confession, after asserting the power of the civil magistrate to be "God's holy ordinance," adds these memorable words which go deep into the essence of the present controversy: 'Whosoever goes about to take away or confound the HOLY STATE OF CIVIL POLICIES now long established, we affirm the same men not only to be enemies to mankind but also wickedly to fight against God's expressed will." There can be no question that at this period the interpretation of statute law was exclusively subject to the regulation of the "*civil policy*," and for the Church to have demanded any such power as being essen-

* Melville's Diary, p. 599.

tially of "divine right," would just have been one of the most effectual methods of taking away and confounding "the holy state of civil policies," which is here so much reprobated. But, indeed, the idea of the Church advancing a claim to sit as a judge on the meaning of any statute whatever, never once entered the minds of Knox, Melville, or their co-adjutors, and in the various articles and demands which they at different times presented, whether to the sovereign or the parliament, there is not the most distant hint of such a claim.

In 1567, when their party in the State had the entire ascendency, (their great patron, the Earl of Moray being Regent,) they proposed to Parliament to have the acts of 1560, abolishing Popery, and ratifying the Confession, anew confirmed, "for avoiding all debate, doubt, and question, about their interpretation." But did they seek to be constituted interpreters themselves? Never once. They craved, indeed, for the Church "jurisdiction," yet it was only "such freedom, privilege, jurisdiction, and authority, as justly appertain to the true Church of Christ." But, as we have already seen, the authoritative exposition of a country's laws forms no part of the privilege or authority of any Christian Church. They also craved, and it was granted to them by the act of Parliament 1567, "That there be no other *jurisdiction ecclesiastical* acknowledged within this realm, other than that which is, and shall be, within the same Church, or that flows therefrom." This was intended both to exclude all popish jurisdiction, and to confirm the jurisdiction of the Presbyterian Church, which, however, had been already defined in the act, as embracing only the jurisdiction inherent in every true Church of Christ, and therefore cannot be understood as including any thing that does not belong to that jurisdiction, such as the interpretation of statute law.

To prevent, however, all mistake as to the nature and extent of the jurisdiction that was craved and conceded, it is important to observe, that before the act of Parliament was drawn up, the Regent's commissioners, who met in conference those of the Assembly, while they approved of the clause generally, desired to have the jurisdiction of the Church more clearly defined, and proposed to have certain of the privy council appointed by the Regent, "to the limitation thereof." Accordingly, the act is very explicit in defining and limiting the jurisdiction granted, "which jurisdiction (it says) consists and stands in preaching the true word of Jesus Christ, correction of manners, and administration of holy sacraments," without one word being said as to her courts having the slightest authority to judge of statute law. This act was ratified by several others of different dates, and specially by one in 1579, in none of which, however, was the jurisdiction given to the Church extended beyond the privileges just specified; and even in regard to these privileges, it is manifest there is this limitation implied, viz., that they should not be exercised in an illegal manner; for example, that a minister should not abuse his freedom "to preach the word," by preaching high treason or sedition.

Another section of that act, 1567, is often quoted as evidence of the authority granted to the Church, viz., "That the examination and admission of ministers within this realm be only in the power of the Kirk, now openly and publicly professed within the same,—the presentation of laick patronages always reserved to the just and ancient patrons. Providing that in case a patron present a person qualified to his understanding, and the superintendent or commissioner of the Kirk refuses to receive and admit the person presented by the patron, it shall be lesum (lawful) to the patron to appeal to the superintendent and ministers of that province where the benefice lies, and desire the person presented to be admitted, which, if they refuse, to appeal to the General Assembly, by whom the cause being decided, shall take end as they decern and declare."

Now, let us here wave all questions which have been raised as to whether the whole of this section of the act 1567 has still the force of law; let us give the Church the full benefit of the supposition that no proviso herein contained has been annulled by the abolition of the office of superintendent or by any subsequent enactment, or superseded by the "binding and astricting clause" of the acts 1592 and 1711; let us take it for granted that every immunity here conferred is as much the Church's right to-day as when the act was first passed; yet, after all, what is the real bearing of this clause on the point we are now considering? It is certainly declared that no minister shall be admitted without "examination," and that his examination shall be in no other hands than those of the Church, but *it is not said* that the Church may, or may not, examine a legal presentee according to her pleasure; on the contrary, the bestowal of the exclusive right to examine, clearly implies the indispensable performance of the duty. It is further declared, that no presentee, though examined and found qualified, shall be entitled to exercise the functions of the ministry, or enjoy the fruits of the benefice, unless lawfully admitted, and that the power of "admission" shall only be in the same body that examined, but *it is not said* that they are at liberty to admit or not, as they please, an examined and qualified presentee. The patron is supposed to present to the superintendent a "person qualified to *his* understanding"—for what conceivable purpose, but that the superintendent may ascertain by examination whether he is qualified according to *his* understanding also? for in him is vested, by the previous part of the act, the "examination and admission of ministers;" and his privilege and duty it is to examine and try all presentees, that he may receive and admit the qualified, and refuse to admit the unqualified. In the latter event there is an ultimate power of appeal to the General Assembly, "by whom *the cause* being decided, takes end as they decern and declare." What cause? Why, the cause litigated—the matter in dispute between the parties—the cause of the presentee who has been rejected by the superintendent, because by him found unqualified, but who submits himself (by appeal) for examination to the General Assembly, in the hope that their judgment of his qualifications may be more

favourable, and in that judgment he must acquiesce as final. As it is on all hands admitted, that on the question of real, personal *bona fide* qualification, the jurisdiction of the Church is exclusive.

That this is the plain import of this much-contested proviso of the act 1567, must be apparent to every unprejudiced mind. If a different construction has sometimes been put upon it, the misapprehension has arisen from disconnecting the last clause from those which precede it, and especially from that part which requires "examination" as a *sine qua non*, an indispensable condition either to admission or rejection, whether by the superintendent or the Assembly. To suppose that this act authorises the Church's office-bearers to reject a man whom they acknowledge to be qualified, or whom they will not examine that they may test his qualifications; much more to suppose that it warrants them to do in the matter whatever they may think fit (though to the indirect but illegal destruction of the patron's right; which the act was expressly designed to protect)—in short, to suppose that this act gives to the General Assembly any power beyond the power to "decern and declare" its judgment on the merits of any contested case of "examination" and "qualification" brought before it by regular appeal—is an idea that is inconsistent with every principle of sound interpretation, as well as with the ascertained facts of the Church's co-temporary history. If the meaning and design of the act was really to leave patrons and presentees at the complete mercy of the Supreme Church court, to deal with presentations in any manner they pleased, however arbitrary—then it is manifest that the settling of parishes would have been virtually in the Church's uncontrolled power; and as we know she was in those days opposed to patronage, we can be at no loss to ascertain the principle upon which settlements would thenceforth have been conducted;—the more especially as upon the supposition made of her sentences being conclusive not merely as to the particular *cause* appealed, but as to the *entire matter*—those sentences would at that period have carried *civil* effects as well as spiritual, for the imaginary check of a separation of the benefice from the cure had then no existence.

But though I have thus laid before you what I hold to be the only true meaning of this act, it is not necessary for the establishment of my present position that you should take the same view as that which has now been expressed. All that is requisite is, that you admit the possibility of a dispute having arisen soon after the passing of the act between a patron and the General Assembly as to its *legal meaning*. Put the case that a controversy had arisen similar to that which has so unfortunately arisen now;—the one party saying, "The Church will not examine my presentee's qualifications"—the other retorting, "We have examined, and finding that a majority of the parish dissent from his appointment, we hold that to be a sufficient *disqualification* and will proceed no further." Here you at once perceive it is the old question again come up: "Who is to decide between them? Who is to pronounce authoritatively and finally on the true meaning and binding force of these terms, "examine" and

"qualified," in this same act of Parliament? Does the act name either of the parties as its interpreter? *Does it assign the office of expounding its legal import to the General Assembly?*—WHERE?

In order that we may meet the question with all fairness, let us, in the wording of the act substitute for the Church courts any other body of men you please. For though there is doubtless a sacredness in their functions which belongs to those of no secular office, yet be it well pondered by you, that with regard to the only point now before us, viz. the powers assigned to them as the courts of an Established Church by *act of Parliament*, the phraseology of that act must be explained in precisely the same way when employed in speaking of them, as it would be if employed in reference to any other corporate body in the country. It would be a strange and precarious state of things indeed, if words used in a statute of the realm, and intended to convey certain municipal rights (and it is these only that acts of Parliament can in a case like this convey) could carry one meaning as to one set of men, and a different meaning as to another. Even when the State acknowledges a *divine right* in the Church to do certain things, it nevertheless takes care to specify and define the particular things which it authorises her to do as the "National Church," in precisely the same terms that would be employed in reference to a merely human institution. It is manifest that if this were not done—if the Church were left at liberty to define her own powers "as an Establishment," and to claim as of divine right to do within the State whatever she might conceive to be, or choose to call *spiritual*—that would be neither more nor less than the revival of one of the worst features and most offensive forms of Popery. The truth is, that though the Established Church, *as a Church*, is a divine ordinance, yet *as an Establishment* it is a human institute whether you choose to speak of the powers it possesses in that character as conferred by the State, or only ratified.

Make then a supposition which you can all understand. There is a proposal which is much canvassed at present, to erect Boards at the principal sea-ports of the United Kingdom, for the examination of those who may be appointed to the command of merchant ships. Now were an act of Parliament passed for that purpose, let us suppose it drawn up in the *very words* of this act 1567 we are now considering, viz. 'That the examination and admission of ship-masters within this realm, shall be only in the power of the said Boards: the nomination of the ship-master always reserved to the owner of the vessel. Providing that in case the ship-owner present a person qualified to his understanding, and the local Board refuses to receive and admit the person presented by the ship-owner, it shall be lawful to the ship-owner to appeal to the Trinity Board in London, *by whom the cause being decided, shall take end as they decern and declare.*" These are the precise words of the act under review, and the simple question is, Would an act thus worded constitute the Trinity Board its supreme interpreters? Would it vest in them the final authority to judge of its legal meaning, in the event of that meaning being disputed by a dissatisfied party? A ship-owner, for

example, appoints as master of his vessel a person who is "qualified to his understanding," and presents him for examination to the Board. But that body have made a regulation (whether good or bad is not the present question) that if a majority of themselves, or of the crew, or of the ship-masters or pilots of the port, shall simply dissent from the appointment, they will examine no farther; they hold that to be "examination" within the meaning of the act, and upon that ground alone they find him *disqualified*. The ship-owner and his nominee complain of this as being beyond the statutory powers conferred on the Board by the act which gave it existence; they say, "You are attaching to the words 'examine' and 'qualify' a meaning they never were designed to bear; and against this illegal stretch of power we appeal to a court of law for redress." Now the question here is not, "Was the regulation a right and proper one?" the question is not, "Was it competent for the Board to adopt it?" but the question is: Does the act vest in the Board the right to define authoritatively their own powers under it? Does it recognise them as its supreme and final interpreters? Assuredly not; it must be interpreted, like other similar statutes by the civil court. But the very same reasoning applies to the act 1567 respecting the Church. That act may seem to you to invest the General Assembly with very extensive powers; but there is just one power which it does *not* grant it, viz. the power to be the authoritative interpreter of the legal import of that or any other statute of the realm; and this is the very power which it is at present my object to show you the Church does not possess.

Let it further be supposed in the case we have now put, that the civil court were to find in terms similar to those of the Auchterarder judgment, viz. "that the Board had acted illegally, contrary to the statute, and to the prejudice and hurt of the ship-owner's nominee," whom without examination they had rejected. You can fancy the Board raising the very same complaint as the Church: "This is an encroachment on our jurisdiction, seeing that by the terms of the act the examination and admission of ship-masters is only in our power, whereas by this decision it is virtually taken out of our hands by the civil courts." What would be the obvious answer to this complaint? Why, that there is a wide difference between a civil court defining the general legal meaning of the word "qualified" in an act of Parliament, and setting themselves up as judges of what ought to be the special qualifications of a ship-master? Men who are not professionally nautical cannot be expected to understand the latter, any more than men who are not by profession lawyers can be expected to understand the former;—let each party then keep strictly within their own professional department. It would be for the Board of examiners to say what qualifications, in the *legal* sense of the term, a ship-master ought to possess, but it would be for the interpreters of law to declare what that legal sense *is*. And consequently, if the former mistook the sense, it would be the duty of the latter to set them right—not by themselves assuming the power of examination, but simply by finding that the Board, by insisting that the ship-owner's

nominee shall possess as a qualification what in the eye of the law does not come within the scope or meaning of a "qualification," at all—have exceeded the powers given them by statute, and that by refusing to make trial of his *real* qualifications they are acting illegally and to his prejudice and hurt.

You will find that this reasoning holds good of any body of men who may be established by act of Parliament for the examination and admission of professional persons to public office, be that office what it may. There are in this country medical, military, naval, and other Boards of that description; and with respect to every one of them, were the same circumstances to arise as we have now supposed, the courts of law would say: "We do not pretend to judge of what are, or ought to be, the qualifications of a surgeon, or of an officer in the army or navy, but when they who are the judges take it upon them to attach to the term "qualification" a meaning unknown in law, it is our province to check their excess of power, and keep it within the limits assigned to it by the statute which created them." You may also see the ludicrous absurdity there would be in any such body of men possessing a co-ordinate jurisdiction in the interpretation of the statute; the civil court fixing on the civil sense, and following up the civil effects;—the others fixing on the medical, or military, or naval sense, and following up, within their respective spheres, the medical, military, and naval effects.

We now go on to the act of 1592, for any acts which passed in the interval from 1567 to that date, were only confirmatory of the privileges already granted. That "Charter of Presbytery," (as it is sometimes designated,) after repeating the confirmation of former acts, ratifies and approves "the haill jurisdiction and discipline of the Kirk, aggreit upon by his majesty in conference had by his Heines, with certain of the ministry, convenit to that effect." It then proceeds to state the tenor of the articles agreed upon, enumerating very minutely the matters to be handled in the different Church courts, but we look in vain for the demand of the acknowledgment of any jurisdiction like what is now claimed in the interpretation of statute law. It is afterwards declared that a certain act of 1584, shall "noways be prejudicial, nor derogate any thing to the privilege that God has given to the spiritual office-bearers in the Kirk, concerning heads of religion, matters of heresy, excommunication, collation or deprivation of ministers, or any such essential censures, specially grounded, and having warrant of the word of God." It then takes the power of giving collations out of the hands of the bishops and other judges, and gives it to Presbyteries; but in none of all these provisos can we find any trace of what is now known as "co-ordinate jurisdiction." The "power to give collations," which is recognised here, is tantamount to the power of "admission after examination," which had been conferred by the act 1567; to suppose that it implies an unlimited power of *refusal* to collate, is utterly inconsistent with the well-known concluding clause, "providing the foresaid Presbyteries be bound and astricted

to receive and admit whatsomever qualified minister presented by his majesty or other laic patrons." It is also in connection with this clause that we must read that part of the act which gives full power to Presbyteries "to put order to all matters and causes ecclesiastical within their bounds, according to the discipline of the Kirk." For you will observe that the "binding clause" just quoted, prevents us from understanding this "power to take order" as absolute and unrestricted, seeing that instead of authorising Presbyteries to make regulations that would interfere with the right of patronage, it actually prohibits them from so doing. In truth, as the act itself declares, its chief object was to transfer the "power to give collation and to put order in causes ecclesiastical" from the bishops to the Presbyteries, the only difference in the phraseology used of the latter being that the word "matters" is employed as well as "causes," and both are to be ordered "according to the discipline of the Kirk." What is included under that last expression has been matter of dispute. But there seems no reason to doubt, that by the "discipline of the Kirk" here, can only be understood the same "discipline" which had previously been described and explained in the former part of the act as "agreed upon by his majesty in conference, with certain of the ministry." This cannot possibly refer to the conference regarding the Second Book of Discipline,* which took place in 1578, for the king was then only twelve years of age, and it was managed on the part of the crown by certain members of the privy council; but the conference referred to is the one which had taken place in 1586, between the king in person, and commissioners from the Church, and the articles concluded on were precisely those which are set forth in the former part of this act of 1592. But again I must remind you, that be your opinion of these controverted points what it may, this act gives not the slightest countenance to the idea that it was designed to set up the courts ecclesiastical as possessing co-ordinate jurisdiction with the courts civil and criminal in the construction of statute law. Had a debate arisen between parties having interest, as to the proper interpretation of any of the clauses, the legal solution of the point at issue must have been left (for anything that appears to the contrary,) *exclusively* to the judgment of the courts of law.

The best evidence of this is to be found in the fact, that at no

* That the "discipline of the Kirk" did not necessarily mean either the First or Second Book of Policy, appears from an extract given by James Melville in his Diary, (p. 643,) from the Record of the Presbytery of St. Andrews, (of date 1604,) of which he and his uncle Andrew were then members. It describes the design of the act 1592 to be "for the explanation of the present discipline generally authoriseit *in the Confession of Faith*," without mentioning any other standard; and yet, in the "Claim of Right," presented by last Assembly, this single expression, "discipline of the Kirk," in the act 1592, is held to include whatever any General Assembly may have previously chanced to enact! . . . The Covenanters in 1638 engaged to maintain the "Discipline of the Kirk," and by this expression some understood the Second "Book of Discipline;" but what says Johnston of Warriston?—"They mistake our oathe to manteine the Discipline of this Kirk as gif that war to manteine the Book of Discipline and all that thairin ar."—*Baillie's Lett.* vol. ii. p. 451.

period of her existence until the year 1838, was a claim to interpret the law for herself—irrespective of the decisions of the civil courts—once put forth by the Presbyterian Church. I know not that such a pretension was ever advanced even by the Church of Rome—whose methods of usurping authority within the State were more insidious, but not more effectual than such a power would prove, were it conceded to the extent now craved. You in vain look for the demand of it in either of the Books of Discipline. The only power and jurisdiction which they claim for the Church is that which flows from its invisible Head, and of this (as we formerly showed you,) the prerogative of expounding human laws forms no part. It is, moreover, specially worthy of remark, that in the long and violent struggle which took place after the year 1592, between King James and the Presbyterian clergy, the objections urged by the latter against the introduction of bishops into Parliament will be found to apply with equal force to this demand of co-ordinate jurisdiction. It is true that the commissioners of the Kirk had, in the year 1585, sought to be allowed to send ministers and elders to Parliament "to represent that estait at whose mouth the law ought to be requyrit, namely, in ecclesiastical matters." But though that demand was indignantly refused by the king, he, at a subsequent period, resolved to adopt the principle, only substituting bishops for ministers and elders. Accordingly, in the year 1598, he prevailed on the Assembly which met at Dundee, to pass a resolution, "that it was needful and expedient that ministers should vote in Parliament, and that that office was of a mixed quality, partly civil and partly ecclesiastical." When Andrew Melville and his brethren objected to this, as secularising the character of the clergy, the monarch reminded them of their own demand in 1585, but they flatly denied that it had ever been sanctioned by a General Assembly. They further urged that it was contrary to the word of God "that ministers sould be involvit and intanglit with affairs of this life, namelie of polecie, civil judicators and effears of comoun weill." They described the office as consisting in "the twa graittest points of the magistie and princely State, that is the *making* of laws in a comoun-weill and *judging* of the subjects according to the same." They condemned all this as a confounding and mingling of jurisdictions distinguished in the word of God; and "Heir was declarit at lainthe and very weghtelie be Mr Andro, be what meanes and degries the Pape was hoised upe into that chaire of pestilence whereout of he tyrannises over all Kirks and comoun-weills, tramping kings under his feit, and transferring thair crownes and dominiones at his pleasur; and *all from this usurping of baithe the powars and swords, the civill and ecclesiastic.*"*

We are next brought down to the era of the Covenant in 1638. The famous Glasgow Assembly did partake very much of the character of a political convention, and its acts were the means of effecting a revolution in the State as well as the Church. The leaders

* Melville's Diary, p. 231, 447—9, 454.

felt themselves constrained from the necessity of the times to usurp authority of a civil nature, which at a more settled period would not have been permitted; but no sooner was the crisis past, than their first and most earnest desire was to have all their actings ratified by Parliament, because, said they, "the civill power is keeper of both tables; and wherever the Kirk and Kingdome are ane bodie, consisting of the same members, there can be no firme peace nor stabilitie of order *except the ministers of the Kirk, in their way, press obedience of the civil law*, and magistrates and their civill power, and their sanction and auctoritie of the constitutions of this Kirk."* When Episcopacy was abolished by the Scottish Parliament in 1639—40, all civil power conferred upon ecclesiastical persons (whether in the making or interpreting of laws) was declared unlawful; and when patronage came to be abolished in 1649, it was not allowed to be done by any indirect illegal act of the Church, but by a direct act of the State, the interpretation of which, in the event of any dispute as to its import, would have belonged exclusively to the civil court.

The act of Settlement at the Revolution added nothing to the Church's power in the matter of which we are now treating. It ratified indeed the act 1592, and confirmed the Presbyterian Church government, as "the only government of Christ's Church within this kingdom"—a declaration which might have been made in precisely the same terms in favour of Episcopacy or any other form, without its being held to mean (as it has been strangely tortured to imply) that the office-bearers were to enjoy unlimited independence of the State. Why, that same act of 1592† *had bound* them to receive and admit qualified presentees; and the act 1690 "concerning patronages," though it altered that arrangement, *did bind* them to give effect to the initiative nomination of the heritors and elders (to the exclusion of their own or the people's), and virtually put it out of their power to give the people an absolute veto, because it expressly required "reasons to be given in" by those who disapproved.

That the Westminster Confession was on that occasion likewise ratified by the Scottish Parliament cannot affect the truth of the *facts* now stated—*facts* which are wholly independent of all *theories* as to "the power of the keys" assigned by that Confession to the Church; only that it is obvious to remark, that if by such a power our ancestors had understood an uncontrolled jurisdiction in the filling up of vacancies, it is impossible they could have acquiesced with a safe conscience in the Revolution Settlement. But with respect to the main point now under discussion, viz. the authorised interpretation of statute law, that is plainly one of the "civil affairs

* "The Humble Desires of his Majesty's Subjects in Scotland," in Peterkin's Records, p. 227.

† It is rather an odd way to seek the meaning of the act 1592 in the act Rescissory of Charles the II. 1662 (as if the object of the latter had not been to make Presbytery out to be as bad a thing as possible), and yet this is the method taken in the "Assembly's Claim of Right."

which concern the commonwealth,"—and with these, it is solemnly declared by the Confession of Faith, as it had formerly been declared by the Second Book of Discipline, the Church's office-bearers "are not to intermeddle." The Treaty of Union with England imparted no new privileges to the Scottish Church; it only confirmed these she already possessed, among which, as we have seen, that of co-ordinate jurisdiction found no place. The Claim of Right presented by the last Assembly proceeds upon the assumption, that the denial of this authority to the Church is tantamount to a denial of the Headship of Christ, and to a revival of the doctrine of the supremacy of the crown in matters ecclesiastical. With equal truth might it be affirmed, that when the Court of Queen's Bench gave judgment not long since against the House of Commons, their decision was a denial of the constitutional authority of the British Parliament—a revival of the odious Star-chamber tyranny of Charles I., or of the still more dangerous "dispensing power" of James II. Over the Church of Scotland, the crown, as *the executive*, exercises and seeks to exercise no authority whatever similar to what it possesses over the Church of England; but the courts of the crown, as the source of *judicial* authority, have always been, now are, and ever must be, the supreme interpreters of the country's laws, whether these laws relate to individuals or to bodies corporate, —whether to the rights and duties of the laity, or to the immunities and functions of the established clergy. As the judges of these courts are not removable at pleasure, they are equally independent of Church and State, and consequently well qualified to act as impartial arbiters between them.

6*thly, The final authoritative interpretation of all acts of Parliament, except those relating to crime, belongs exclusively to the supreme civil court.* Had the act of Queen Anne restoring patronages, contained a clause to the effect "that the judgment of the Presbytery shall be final, without appeal to or review by any civil court," the case of the Church might have seemed very strong, but it would not have been stronger than is actually the case of Presbyteries under the "Schoolmaster's act," from which these words are taken. And yet even the Memorial from the Convocation admits that here "the exclusion of review is inherently conditional on exact observance of the terms of the statute, *as interpreted by the civil courts;*—so that the supreme civil court still retains a radical and super-eminent jurisdiction, against which the exclusion of review presents no bar, if, in their opinion, the provisions of the statute have not been strictly adhered to. Accordingly, the supreme civil court has often exercised its jurisdiction to the effect of judging whether Presbyteries have adhered to the limits prescribed in the act, and of annulling their whole procedure where in its judgment they had in any respect deviated from these limits."* If then the civil court has supreme jurisdiction to interpret a statute, even though by the very terms of that statute its jurisdiction might seem

* Memorial of the Convocation, p. 16.

to be excluded, much more does it possess that power when there is no such exclusion, either express or implied, as is the case in every one of the acts we have been reviewing, and which embody the terms of the civil establishment of the Church by the State. As these acts relate neither to the revenue of the country nor to the punishment of crime, the interpretation of them pertains not to the courts fiscal or criminal; and we have seen that in the authoritative exposition of statute-law, the Church courts neither inherently possess nor have received from the State any jurisdiction whatever. There remains therefore only the supreme civil court, (the House of Lords,) and its appellate jurisdiction extends in this respect over every civil and fiscal court in the country.

With a view to exclude, or at least limit, the jurisdiction of the Court of Session, the public manifestoes recently issued in name of the Church, dwell much on the circumstance that in the act by which that court was instituted, it was declared to be appointed only for the trial of "actions *civil.*" To this it would be enough to reply, that both the actions in the case of Auchterarder (with which alone we are at present concerned,) were actions *purely civil.* But as the allegation referred to gives a very unfair representation of the modern jurisdiction of that court, it is proper to remind the reader that the act in question was passed in times of popery, and that the expression "actions *civil*" was used in contra-distinction not only to "actions *criminal,*" but also to "actions *ecclesiastical,*" which included all debates touching marriage and divorce, testaments, barratry, &c., and were tried by the arch-deacon's official, the bishop's commissary, and the auditor or official principal of the province, from which last there lay an appeal to the Pope. At the Reformation the jurisdiction of these spiritual courts was not made over to those of the Presbyterian Church, (though, as appears from the Second Book of Discipline, there was a desire on the part of the latter to possess it,) but it was vested in commissaries appointed by the crown, and these continued to exercise it up to a comparatively recent period, when their powers were transferred to Sheriffs, and to the Court of Session. It may be added, that it is a judge of that court who now discharges all the judicial functions of the Court of Exchequer.

Having now laid before you the proof of the first four propositions, (which embrace the more important points in the controversy,) I shall not dwell so long on the two which remain, because they are very much *inferential* from what has already been established. The 5th proposition is: "*That as the supreme civil court has declared the veto act to be beyond the Church's constitutional power, and the State has refused to legalise it, the Church is bound either to conform its own law to that of the State, as authoritatively declared, or to cease to profit by the countenance and emolument which the State confers.* You will sometimes hear it confidently asserted, that the keeping up of the veto law has nothing whatever to do with the Church's present difficulties, for that that "act has never yet been

declared illegal even by the civil court."* Can subterfuge and sophistry go beyond this? It is true that the judgment of the House of Lords makes no mention of the veto by name, but it does find and declare that the rejection of a presentee "on the sole ground that the male heads of families communicants have dissented, without any reason assigned, from his admission" is an illegal and unjust procedure. And pray what is that but a description of the veto law? and if the *principle* of a measure be pronounced illegal, how in the name of candour and common sense can the measure itself be regarded as possessing the force of law? The Church, as we have shown, has no power to interpret authoritatively the statutes of the realm, and if then the supreme civil court, to whom alone in the present case authority belongs, has pronounced a certain act of the Church to be inconsistent with certain acts of the State as by them interpreted; I put it to every one of you, upon what principle of constitutional law, upon what feeling of moral honesty can the Church be justified in any longer maintaining it? I have already admitted that so long as there was a reasonable prospect of the State legalising the law of the Church by a fresh enactment, the repeal of the law was scarcely to be looked for; but circumstances are now completely altered, and the question with every one of plain understanding and straightforward dealing is: "if it be illegal, why is it not repealed?" I hold that, even though no civil rights were involved in the matter, it is the sacred, bounden duty of every man, much more of a body of Christian men like the Church, either to renounce the peculiar and exclusive privileges which the law of the country confers upon them, or to perform the duties which the same law of the country as now declared binds them as the possessors of these privileges to perform. And here then, my friends, when we say that the Church, if she is to continue the Established Church, *ought* to repeal her veto act, we are not speaking of that repeal as if it were only a matter of high expedi-

* This was the language of the *Witness* newspaper, in an article on my *First* Letter, written by a man whose name is identified throughout Scotland with arrogant dogmatism, coarse vituperation, and unblushing effrontery. I understand I have since then been honoured with other respectful notices of my name and labours (similar to those Dr. Buchanan received from the *Dundee Warder*) in the columns both of the *Witness* and of another "pious print," the *Scottish Guardian*. These, however, I have not seen, but it may be gratifying to the writers to know, that every fresh compliment has been followed by fresh orders to my publisher; so that I may say with another well-abused author, "I found by Dr. Warburton's railing that the books were beginning to be esteemed in good company." The chief ground of accusation is that I ventured to address my people from the pulpit on subjects very nearly affecting the existence of the Established Church. And by whom is this charge brought? Why, by men who have been doing the same thing for years, and long before the Church was in any danger, and some of whom cannot exclude these topics even from the solemnities of a communion Sabbath. Out upon such disgusting hypocrisy! I am not ashamed to acknowledge that many passages in these Letters were addressed to my people either on Sabbath or on a week-day; but every reader of sense will understand that, as there were things in the discourses which are omitted in the Letters, so there are things in the Letters which found no place in the discourses.

ency on her part—we hold it to be matter of *moral obligation*—and if so, you may see how futile and utterly irrelevant to the real question are the reasons commonly assigned by the defenders of the veto act against its repeal. You will hear them say, "We do not care for the veto; we are willing to repeal it to-morrow—*provided* we get the principle recognised—*provided* you give us something as good or better in its stead. But to rescind it without that, would only be to give occasion to our opponents to triumph over us. Besides, though the judgment of the civil court only set aside the people's dissent without reasons, some of the judges hinted opinions which would still farther limit the Church's power, and therefore we will continue to adhere to the veto, the more especially as now though we were to rescind it, we would not thereby be extricated out of all our difficulties—and what are we to substitute in its room?" Now all these and such like pretences which you hear alleged for not abandoning the veto, are based on the supposition, that the Church has a legal or moral *right* to keep it up if she think fit. But if it has been pronounced illegal by the only competent court, then I say she has no such right in the sight of God or man, and her attempt to exercise it in the face of the declared law of the country is irreconcilable with the first principles of civil government, and would, if persisted in, be destructive of all social order. This is true even though no personal injury were inflicted; but when in addition to that, it is found to be a violation of the civil and patrimonial rights of others, I want words to express my astonishment, that such a position as that we are combating should ever have been taken up and maintained by Christian men.

It may be said, however, that I am here fighting with a shadow, for that those who refuse to conform the Church's law to that of the country, have resolved to adopt the other alternative in our proposition, and to "cease to profit by the countenance and emolument which the State confers." Nay, but what has led them to adopt that resolve? Is it because the veto has been found illegal? Is it because it was pronounced an encroachment on civil rights? Not at all. The veto was found to be illegal, and was pronounced to be civilly unjust *nearly four years ago;* and what was the determination the persons referred to *then* adopted? Why it was, that the Church should maintain her illegal, unjust act at all hazards, and yet remain the *Established* Church in her own right. So little were they at that time inclined to leave the Establishment, that when some of their opponents threatened to appeal to the law-courts to decide as to which of the two extreme parties should be declared the National Church, a great meeting was summoned at Edinburgh of ministers and elders in the month of August, 1841, with a view to organize throughout the country Church Defence Associations, the main object of which was to preserve the upholders of the veto within the Establishment. Well, the *next* great meeting of the same parties was held in the month of November last, and its main object was just diametrically the reverse, viz., to encourage and enable the upholders of the veto to leave the Establishment,

and therefore the associations for "Church defence" are suddenly converted into associations for "Church destruction." Whence this abrupt change of policy? It is not because they now admit the illegality or incompetency of the veto act; it is only because, in the meantime, it had been found and declared that they are liable in damages whenever they attempt to enforce it.

Now, while it is certainly matter of deep regret that so many ministers should, for any cause, feel themselves constrained to leave the Church of Scotland; and while it is ground both of sorrow and surprise that before leaving the Church themselves, they should see it their duty to use every effort to blast the character, and impair the usefulness, of their brethren who may remain, and if possible, to bring down Samson-like, the venerable fabric, though they should perish in its ruins; yet the determination at which they have at length arrived, undoubtedly places them in a more intelligible and consistent, and I must add, in a more honest position, than that which they previously occupied. Do not, however, take up the notion, that they are threatening to leave the Church because the State will not give them what they are demanding for the people. No! it is *chiefly* (as the tenor of the Second series of the Resolutions of the Convocation bears,) because the State will not leave every General Assembly* at entire liberty to do in the settlement of parishes as its temporary and fluctuating majorities may chance to decide, however contrary their decision may be to the law of the country at the time, or however prejudicial in the eye of the law to the statutory rights and vested interests of patrons, presentees, or people.

The ministers who drew up these resolutions can have no serious expectation that such claims will ever be granted; nay, it would be next to impossible for the most ingenious lawyers in their counsels, to frame a Bill which would meet in all points their demands. Let us then at present confine our remarks to the Non-Intrusion part of the claim,—our last proposition being, "*That the veto law (however in some respects desirable,) is not of such essential necessity as that for its sake alone the advantages of an Establishment should be wantonly thrown away, and the National Church broken up or destroyed—the more especially as there is no doubt whatever, that by their own properly directed efforts, the people of Scotland will, in course of time, obtain from the legislature a greater influence in the settlement of their ministers than they at present possess.*"

The difficulties and embarrassments which at present surround the Church are doubtless very numerous and great; but if you examine their origin, you will find they may all be traced up to two

* If it is thought that I here ascribe too much power to the General Assembly, I beg to say that I am not referring to what it possesses by the law of the Church, but to what it has of late been in the habit of usurping, and is permitted to usurp without check or hindrance. For example, it has virtually substituted the *call* for the *veto*, though the Church declared by her counsel at the bar of the civil courts, that she had fixed on the latter as a *bona fide* substitute for the former.

measures, which were exclusively her own, viz., the passing of the veto act, and the erection of *quoad-sacra* parishes. With regard to the latter, it is satisfactory to know that should the decision be against the Church in the House of Lords, as it has been in the Court of Session, the Queen's government have signified their intention to apply a legislative remedy. And with respect to the veto act—while it would be wrong to pretend that its simple repeal would at once put an end to our other difficulties, yet it is evident that there can be no satisfactory adjustment of them so long as that act stands unrescinded. It, and it alone, is the source of all the evils that have arisen in this branch of the contest with the civil courts, and until it be removed from the Church's statute-book, these evils will only be extended and perpetuated. To suppose that the legislature will take the unprecedented step of reversing the decisions of courts of justice, given in vindication of the law of the country, and in defence of outraged civil rights, is an expectation most visionary and baseless. But let the Church, by the repeal of her illegal and unjust act, quietly retire within her own province, and the civil courts will be deprived of the occasion and pretext of further interference. It is the more absurd to maintain the veto in force now, because it is to all intents and purposes a dead letter, wherever a patron, or even one of the Church's own presentees or presbyteries, chooses to resist it. It was a saying of Edmund Burke, that nations ought never to go to war for an unprofitable right or a profitable wrong. Now, if the veto be not a profitable wrong, it is at least an unprofitable right. If indeed it can be shown that it involves a principle of essential necessity to the honourable existence, the purity and efficacy of a Church, then all argument is at an end, and the refusal of the State to legalize it ought to have been followed long ere now by the dissolution of the State connection. But can it really be shown, from reason or scripture, that the principle of this act is a thing of indispensable necessity in the arrangements of Church government?

This question, you will find, has a double aspect—one as it regards the *people* among whom a presentee is to be settled, the other as it regards the Church's *office-bearers* who are to conduct his settlement. With respect to the latter, the shape it assumes is this, "Ought the people's simple dissent to be a bar to ordination? Is that *alone* a sufficient ground for refusing to invest with the pastoral office?" I showed you in my *First* Letter that it had never been so viewed by the framers of the veto act, who had all been ordained themselves, and taken part in the ordination of others, without this principle having ever been recognised or acted upon; and that they would assuredly have been going on still according to the former practice, had not their party chanced to acquire a majority in the Church courts. I have likewise had occasion to prove to you, that the Non-Intrusion Committee themselves expressed their willingness to accept a measure which would substitute the discretionary will of the Presbytery for the absolute will of the people. The truth is, that we in vain look in the New Testament for any thing to coun-

tenance the idea, that the Church's office-bearers are to refuse to set apart a man to the holy ministry against whom no "just cause of exception" can be shown, or though in their judgment the objections brought against him by the people are grounded on "causeless prejudices," or wholly without foundation.* Much less can we find any scriptural sanction to the modern notion, that the people's peremptory rejection of a man without adducing any reasons at all, is of itself a sufficient warrant for his rejection by the Presbytery. There is doubtless a sense in which the people are to "try the spirits," but the capacity to try pre-supposes a capacity to state not only the result of the trial, but the reasons also upon which the condemnation or approval is made to rest. Let Presbyteries by all means have respect to the "will of the people;" but let them distinguish between their fanciful, arbitrary, *unreasonable* will (I call it so because it is unaccompanied with reasons) and their will as the result of a sound and settled *judgment*, based upon distinct reasons and palpable evidence, which they can bring forth to the light of day, and submit to impartial examination. Now of these reasons, and that evidence, the Church courts are the official judges, and of *that* power of judging no decision of a law court has as yet deprived them.† When I look at the veto *objectively*, I can understand it and acquiesce in it as a popular element in a presentee's "nomination;" but when I look at it *subjectively* in its connection with the spiritual jurisdiction of the courts who ought to be the final *judges* of a presentee's "qualifications," then I feel that the people's dissent without reasons, instead of extending that jurisdiction, rather tends to limit it. It substitutes for the *judgment* of the Presbytery grounded on reasons, the absolute negative of the people supported by no reason at all; it compels the former to reject without inquiry as *unqualified*, a man whom upon inquiry they might have found in their opinion well fitted ultimately to promote the people's spiritual benefit, though meanwhile the object of groundless hostility and blinded prejudice; yea, it forces them to reject as disqualified a man whom they themselves may believe and know to be highly qualified for that very parish;—in short, it exercises the same despotic power over Presbyteries as would unrestricted patronage. The one says, "Settle this man, though contrary to your judgment;" the other says, "Reject this man without examination."

Viewed then in this light, I hold that the principle of the veto is any thing but an essential in ecclesiastical polity. And even when we regard it under the other aspect I mentioned, viz. in reference to the rights of the *people*, while it may be thought *desirable* as a check upon patronage, will any one venture to affirm that it is absolutely *necessary?* If the people of Scotland, however, are of opinion that they ought to possess that influence in the appointment

* The expressions quoted are those of the Westminster Assembly's "Form of Church Government," and the "Act of Assembly, 1649." As for the supposed "*Fundamental Law*" see the Note at the end.

† The case of Culsamond was so mixed up with the illegality of the Veto act, and its regulations, that it is no decisive case in point.

of their ministers, which a legal veto would certainly give them, or even greater influence still,—it is open to them to apply to the legislature for what they desire in the same constitutional manner in which they applied for, and obtained other public rights which they now enjoy. But let me frankly tell you, that this, in my opinion, is their own business, and not that of their ministers. The clergy, indeed, cannot be expected to view the matter with indifference, but their active intermeddling in it is uncalled for, and injudicious, and instead of advancing the cause of the people, has, in point of fact, greatly retarded it. The reason is obvious;—the rights of the people and the rights of the clergy are so mixed up in the dispute, that even when advocating the former, the clergy are suspected, though doubtless often unjustly, of being mainly anxious to secure the latter. Now, unfortunately, it cannot be denied, that while they are at present seeking to give power to the people, they virtually make that power to flow from, and be dependent upon, the will of the Church's office-bearers, *i. e.* on the view which may be taken of the people's rights by the majority for the time being, and if one majority can *give* the power, another can, on the very same principle of unlimited spiritual independence, and in the exercise of the same legislative authority, see fit to withdraw it. The language, therefore, which the Church ought now to hold to the people is this:—"You see what we have attempted to do for you, and how we have failed; we have exhausted all constitutional methods of increasing, in the manner we proposed, your influence in the settlement of your ministers, and as any farther attempts on our part are liable to misconception, and would only prejudice your cause, we now leave it in our own hands; you must learn to fight your own battle, and if your demands be equitable in their nature, and consistent with the welfare of the Church and the stability of the constitution, there is no doubt that they will in due time be granted." But what folly would it be in the people to abandon the Church of their fathers, because they do not *as yet* enjoy in it all the liberties they desire, and may ere long possess. Why, for the same reason, those of them who were friendly to Parliamentary and municipal reform, might have resolved to leave the country because the State would not at once invest them with the privileges which they claimed. I have no sympathy with those who pertinaciously resist all popular demands, but I have much less with them who would first desert and then destroy an institution confessedly so valuable as the Church of Scotland, because forsooth the reforms they wish to see introduced into it are not brought about at the particular time, or in the particular manner which they desire. Between the two fatal extremes of being conservatives of evil, and destructives of good, there is much room left upon which honest men can take their stand, and so employ their efforts as to prove conservatives of good, and destructives only of evil. That is the ground which every sound-hearted Scottish layman, who knows what the Church has been and still is to his country, ought now to take up. Agitate with the State for

what you please—for the modification, or if you will, the abolition of patronage; but I bid you beware of putting forth sacrilegious hands to cast down the fabric, which was reared by the labours of your ancestors, and cemented with their best blood.

I have now, my friends, laid before you, and at greater length than I originally intended, the views I have uniformly maintained and expressed regarding the position of our Church in its relations to the State; and *I challenge friend or foe to point out a single sentiment in these Letters inconsistent with any of my former professions.* The sum of what I have advanced and endeavoured to establish is this, viz. That the Church does already limit in a voluntary way her independence* with respect to the *initiative* in the appointment of ministers, and that the only real question therefore is,—May she not (at least for a time, until the State shall see the matter in the same light) likewise consent to a similar limitation in reference to the "dissent of the people without reasons"—while she at the same time asserts her as yet undisputed right to judge of the objections the people may bring forward. I now solemnly ask you, Is there in this state of things—which after all may only be temporary—any thing that can justify you in prematurely withdrawing from the Church, or in contributing your efforts to the Church's overthrow. Let us go back in imagination ten short years before the veto law was enacted. If any pretended friend had then exclaimed, "A Church where the people's 'dissent without reasons' is not acted upon ought not to be upheld! 'raze it, raze it, even to the foundations thereof!'" What an outcry would have been heard at such a proposal *then*, and the loudest in the cry would have been the very men who are now the most active in seeking the Church's destruction. Would you have stood by the Establishment in the year 1833? then it is a plain question, "What has happened to excite your hostility to it in 1843?" Has any oppressive act of Parliament passed against it? Not one. The courts of law indeed have made certain decisions, but these have all been occasioned by an act of the Church's own—an act which in 1833 had no existence. And what was the condition of the Church at that period? Were *these* the days when patronage was exercised with high-handed rigour? No: it is on all hands admitted that never was there a greater desire among patrons to consult the reasonable wishes of the people; and then too was the Church more flourishing and united in her spiritual energies than at any former period of her history. If she was worth defending then, can she really now merit nothing but destruc-

* I regret that want of room prevented me from taking up the question, at which I glanced at page 61, as to the independence *practically* enjoyed by the Church's office-bearers among the Presbyterian Dissenters. I confine myself at present to the remark, that in every Dissenting body the degree of *real* independence possessed by the clergy will be in an inverse ratio to the degree of power wielded by the people; for in matters both of doctrine and discipline, the *popular will* exercises as effectual a control as can well be conceived.

tion? But I will go back even to a period antecedent to the year 1833. Take the end of the last, or the beginning of the present century, before there was that general revival and spread of evangelical religion which took place about twenty or thirty years ago. There might be much in the policy of the majority in the Church to deplore, but still the voice of all her true sons said even then, "Destroy it not; for a blessing is in it!" Are you joining in the senseless cry: "Down with the Erastian Church?" Have you forgotten that the Church you are so anxious to level with the dust was, in what it is customary to call its worst days, the Church of such men as John Erskine and Robert Walker, of Webster and Witherspoon, and Moncrief and Thomson, and Balfour and Love? And are ye better than they? Are your principles purer, your feelings more patriotic than theirs?

The mention of the name of the venerated Love recalls a well authenticated anecdote of him, which has a remarkable bearing on the Church's present position. When some one congratulated him, in his latter days, on the increase of the evangelical party, he joined in the gratulation, but at the same time expressed a fear lest they should ever have the uncontrolled management of the Church's affairs, for, said he, "they will drive the machine so rapidly as to break it in pieces." How true Dr Love's prophecy has proved let the present aspect of the Church bear witness! No one can question the pious feelings or sincere intentions of those who have the ostensible lead in ecclesiastical matters, but the excellence of a man's private character is no security for the wisdom of his public policy, and it furnishes no reason whatever why we should not freely censure and boldly condemn that policy, if he is determined to persist in it to the ruin of the Establishment. Let the noblest institution with which any country was ever blessed, be once rooted up, and it will be but poor consolation to the people of Scotland to know that it has been done by the well-meant, but ill-managed efforts of *good men*. If you saw a person unconsciously setting your house on fire, you would not be hindered from interfering, and it might be somewhat rudely, by being told, "Oh, he is a *good* man!" If you were on board a vessel in a storm on a lee shore, and you and other passengers saw the pilot determined to run her among the breakers, though by changing her course she might escape the danger—you, and those who thought with you, would not be withheld from making a desperate effort for your life, because some one said, "Oh, he is a *good* man, the pilot." Or, take the case of the besieged city* that has long been standing out for honourable terms. These, in the opinion of a great body of the officers and citizens, have at length been proposed, but a few of the leaders, under the influence of nothing but false shame and stubborn pride, because their own impracticable terms are not granted, are resolved to blow up the citadel and bury themselves and the whole

* Dr. Macfarlan's Supplementary Letter, p. 1.

garrison in the ruins. You see one of them with a lighted match about to fire the magazine, and you rush forward to arrest his arm, when some one whispers, "Oh, let him alone, he is a *good* man!" My friends, I have no words to express my contempt for those who would silence every honest expression of condemnation of that policy, which has brought the Church to the verge of ruin, because, forsooth, the accountable parties are good men. This is no question of mere feeling, it cannot be decided by the pious emotions of either good men or good women,—it is a great question of constitutional law, and let the blame of mistaking the law, and leading the Church to mistake it, and yet insisting that "there shall be no mistake," be laid at the right door.

Be it so that they are good men, it is not the less true, that through them it is, that a Church of Christ is in a position which in the eye of the law involves rebellion, and that they will only extricate her by an attempt at revolution. Be it so that they are good men, it is not the less true, that they have made demands of the State, in the Church's name, which no Protestant government ever ought to accede to—which no free country ever will accede to. Be it so that they are good men, it is not the less true, that through their counsels and policy it is that our Church is now in such a condition, that "we are a reproach to our neighbours and our enemies laugh among themselves." Be it so that they are good men, it is not the less true that it is they who are now organizing a system of unhallowed agitation, and most deadly warfare, in every parish in Scotland, for the purpose, express and avowed, of alienating congregations from their pastors, of exciting family against family, brother against brother, friend against friend—a conspiracy against Church order, social order, domestic order and peace, upon which there cannot be expected, and there will not descend the blessing of Heaven. If they do succeed in uprooting the Establishment, and supplanting it, that will only be a practical refutation of their own theory as to the necessity of State-support,—it will prove nothing as to their other theory of a Church established by the State, and yet absolutely "free;"—and be the result of the experiment what it may, it will have been made at a sacrifice of all the charities of life, and all the graces of the gospel, for which the success of a theory would be but a wretched substitute. But if, though successful in upsetting the Establishment, they nevertheless fail (which is at least a probable result) in providing the means of religious instruction in its room, then upon them will rest a responsibility they may well tremble to anticipate. Be it so that they are good men, yet it will not be the less true, that *hereafter* to them it will be owing, that from many a highland glen, and many a lowland cottage, there will be heard the cry of famine,—"not a famine of bread, nor a thirst of water, but of hearing the word of the Lord." Be it so that they are good men, yet to them chiefly is it owing *now*, that from every sincere lover of our Zion, who mourns over its sad desolations, there is

heard the plaint:—"OUR HOLY AND OUR BEAUTIFUL HOUSE, WHERE OUR FATHERS PRAISED THEE, IS BURNT UP WITH FIRE: AND ALL OUR PLEASANT THINGS ARE LAID WASTE."

I am,

My Dear Friends,

Your affectionate pastor,

N. MORREN.

*Greenock, March 2, 1843.*

NOTE.—*The supposed Fundamental Law.* (p.114.) Many weak minds are imposed upon by the confident assertion, that it is a *fundamental* principle of the Church, that "no pastor be intruded contrary to the will of the congregation." Now even upon the supposition (which cannot easily be made good) that the expression "will" here denotes the bare, arbitrary will of the people, apart from the allegation of reasonable causes of objection—how can such a principle be made out to be a *fundamental* law of the Church? Is it merely because these expressions happen to occur in an antiquated and now obsolete document, called the "Second Book of Discipline?" Will it be gravely maintained that every sentiment expressed, or every rule laid down in the Second Book of Discipline is still binding as a *fundamental* law of the Church? Why, in that case it is a fundamental law of the Church that "the power of election of them who bear ecclesiastical charges pertains to the Presbytery," that there must be the "consent" or "assent" of the congregation, and not merely the absence of their dissent; that ordination is to be conducted with *fasting*, &c. But the truth is, that this Book of Policy, however valuable as throwing light on the principles of the second generation of our Reformers, cannot be held to be a *standard* of the modern Church of Scotland, in the ordinary acceptation of that term, inasmuch as no licentiate or office-bearer is called to declare his belief in it, as he does in the Confession of Faith. We have seen (Note at page 105) that by the "Discipline of the Kirk" even the Covenanting Lawyers did not understand every thing contained in what was called the Book of Discipline; and at all events it was, in matters of doctrine, superseded by the Confession of the Westminster Assembly, and in matters of discipline by the "Form of Presbyterial Church-government, 1645," which so far from giving effect to the arbitrary will of the people, contains the express proviso, that there be "*just* causes of exception" brought against a man before he be rejected. It is true that the Scottish Church, in approving the latter document, left the question open for future debate; that debate occurred in the General Assembly 1649, and the act which was then passed, while it placed the initiative not in the people, but in the Kirk Sessions, authorised the Presbytery not to reject a man from ordination if in their judgment the dissent of the people was "grounded on causeless prejudices." At the Revolution Settlement the act of Parliament 1592 was no doubt ratified, but even if the expression "Discipline" in it had embraced the whole *Book* of Policy (which it certainly did not) the mode of settling ministers was excluded, because it formed the subject of a separate bill, vesting the nomination in the heritors and elders, leaving to the people to give in "reasons" of objection, of which the Presbytery judged.

But did not the framers of the Veto act make the Church declare when passing it, that "it *is* a fundamental law that no pastor be intruded," &c., meaning by the "will" of the congregation, the *absolute* will without reasons, not of a majority of the whole, but only of a certain class? To be sure they did—and it is one of the greatest blunders they committed; and by a singular coincidence it is a blunder of the same description with that which the Whig leaders in Parliament committed about the same time in reference to the affairs of the *Irish* Church. They prevailed on the House of Commons to pass a Resolution that no settlement of that question would be satisfactory which did not embrace the *principle* of what was known as "the appropriation clause." Sir Robert Peel earnestly warned them against committing the legislature to the affirmation of an abstract principle; but though his warnings were unheeded, it is well known that his opponents did ultimately settle the question without any recognition of the

*principle* they had themselves declared to be indispensable. The framers of the Veto act have been made painfully to feel that the assertion of an abstract theory is a great hindrance in the business of practical legislation; for they themselves in their negotiations with the government, have been compelled so far to modify the principle of Non-Intrusion, as sometimes to admit as an element the judgment of the Presbytery. Now, that alone would be a sufficient answer to them and their friends who accuse others of inconsistency in having voted for the Veto act, and yet now professing that they would be satisfied with less. But the latter have a better reason to allege than the mere example of the Non-Intrusion committee; for, while they supported that act as a matter of expediency, they never once believed or asserted the principle to be one of indispensable necessity. It is true that the Veto act was so framed that in voting for it, they were led in to vote—not that Non-Intrusion is an *essential* principle, but simply that (as matter of history) it was in one sense *fundamental*, as having been recognized by the early Presbyterian Church. The reason why many joined in that vote, who are now convinced upon minuter investigation that the assertion is contrary to historical fact, will be no mystery to those who are conversant with the manner in which all standing laws in the Scottish Church are enacted. An "overture," or Bill, is sent down by the Assembly to Presbyteries, who have but one alternative, either to approve or reject it *as it stands*, for if they make the slightest verbal alteration, they will be held as disapproving of the whole. Now, when the proposed Veto act was submitted to Presbyteries in 1834, there were many (and I confess I was of the number) who had serious doubts as to the *historical* statement in the preamble, but who, at the same time, as they approved of the *spirit* of the measure, and had no objection to the *enacting clauses*, (for which alone the act was practically valuable) voted for its adoption, because had they proposed any omission or change, their votes would have been counted as against it. Let it be borne in mind also, that by "the Church," whose laws we were considering, we understood "the *Established* Church," and though we waved our own doubts, and took it on the authority of such men as Lord Moncrieff, that the State had ratified the Second Book of Discipline, (where the supposed fundamental law was found) we uniformly held, that the ultimate decision of that point, if disputed, would rest with the civil court; and now, as that court has virtually decided it in the negative, I reject the assertion as equally opposed to statute-law and to historical truth, that the principle of Non-Intrusion as embodied in the Veto act, ever was a fundamental principle of the Church of Scotland, *as by law established.*

THE END.

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